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INTERNATIONAL GOVERNMENT

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C. PERRY PATTERSON, UNIVERSITY OF TEXAS
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INTERNATIONAL GOVERNMENT

BY

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TO
M. D. M.

PREFACE

Briefly stated, this book is an attempt to describe how the modern Society of Nations governs itself. It is in considerable part the result of the special opportunity for the study of international affairs at first hand generously afforded by the Carnegie Endowment for International Peace through its European Conference of American professors in the Summer of 1926, and by a Sabbatical leave in Europe the following year.

Of late years, and particularly since the World War, publications dealing with international relations have multiplied rapidly. In the main they have been concerned with three aspects of the general subject: The legal, embracing a wide variety of technical themes, especially those suggested by the experiences of the War, or by the manifest need of a more comprehensive and adequate system of international law; the social, or politico-social, dealing in a broad way with those factors — ethnic, historical, economic, and political, which characterize and complicate the modern Community of Nations; and the mechanistic — that is, the development of international organization as the institutional expression of international life.

This specialized approach to the general field of international affairs is based upon sound principles of differentiation. Moreover, it conduces to the systematic study of international government and politics, and is a necessary basis for their development. But for the non-technical student, or the general reader, it means that he must cover a wide range of study in order to get that general view of the subject which alone is of interest to him.

The writer has ventured to think it possible to present in a single study an outline of the international governmental system at once comprehensive enough to embrace its essential features, and non-technical enough to be of general interest. There would seem to be room in our college curricula for such a study as this, to meet the needs of students who, for one reason or another, do not care to go deeply into the subject along specialized lines, but do want to get a general understanding of the principles, machinery, and methods of international political intercourse. So also, it is believed that an increasing number of general readers desire to lay the foundations for an appreciation of the recent developments in international government, not only as a matter of general information, but to enable them to estimate intelligently the prospective value and permanence of the newer institutions which are coming to play so conspicuous a part in international life.

This book, then, is an attempt to meet the needs of students and readers who have neither the time nor the technical equipment to specialize in the field of international relations, but nevertheless desire to acquire a general knowledge of the governmental relations between the nations of the contemporary world — by what agencies, and how, they conserve their mutual interests, along what lines such agencies are developing, and the outlook for the future of these international institutions of government. It is gratifying to teachers in this field to observe that this desire for a more adequate background for the understanding of current international political events is widespread and increasing. Just as the right-minded citizen has come to realize that his duty as such demands a practical knowledge of the national government under which he lives, so he is fast coming to acknowledge a similar obligation to the International Society of which his nation forms a part — to appreciate the fact that good citizenship no longer stops at the frontier.

The comprehensive plan of this study was suggested by what appears to be a not uncommon failure on the part even of many interested in international relations to appreciate how far international government has progressed, what its bases are, and why, just as the scope of national government has broadened vastly in the past few decades and doubtless will continue to broaden, for obvious reasons, international government must steadily expand, both in function and in mechanism, for analogous reasons. To stress this point, as has been done in many connections throughout the book, is not to plead the cause of internationalism, but simply to recognize an outstanding aspect of modern international life. One may agree that domestic government will continue to multiply its functions, and indicate the reasons why, without subscribing to the principles of the paternalist — may even be an avowed individualist, quite out of sympathy with the tendencies he is trying to diagnose.

To promote in some small way the broader, more intelligent outlook upon international affairs is the purpose of this study. It makes no pretense of being more than a general introduction to the subject of which it treats. It is intended to be informative rather than critical — a non-technical discussion of the salient principles, agencies, and processes of international government in its present stage of development. It is difficult to adhere to this point of view in presenting a subject lending itself easily to detailed scientific treatment; and if a measure of success has been attained, it is because the standpoint of the non-technical student and reader has been kept steadily in mind.

The writer realizes that the broad scope of this study inevitably invites the criticism of superficiality. Granted its validity, the obvious answer is that any other method of treatment would defeat its main purpose — would be so encyclopedic as to repel rather than invite the attention of those for whom the book is primarily intended. Having a consistently practical aim, the writer has undertaken to deal with " actual government " — to borrow Professor Hart's aptly expressive title, to picture international government as it is, not as it ought to be or may sometime become. Without minimizing the theoretical value, or the Utopian appeal, of the ideal schemes for a United States of the World which now and then appear, it must be said that they contribute very little to an understanding of what Professor Brown has called " international realities," nor do they greatly advance the practical work of international organization. Bryce's wise saying that in politics the roots of the present lie deep in the past applies forcibly to international government; it must be built upon the solid foundations of past experience, as are all stable political systems. The question before the nations is, not how theoretically perfect a World Commonwealth they could form if free to organize ideally, but rather along what familiar and tested lines of development they can better the machinery of international intercourse that now exists.

No attempt has been made to demonstrate anything in the propagandist spirit. The remarkable progress lately made in the formal organization of international government must be stressed in any study of the subject, in sheer recognition of the facts of international life. The League of Nations is necessarily discussed at length — not, however, as an institution wholly without precedent, something apart from the main current of international development, but rather as a piece of machinery designed to further the progress of international government along lines entirely familiar in international practice before it came into existence.

Special pains have been taken to indicate the analogies between national and international government, as to origin and development, and to point out some of the problems common to both political spheres. In a study covering so large a field, errors in detail are unavoidable; it is hoped that they have been reduced to a minimum. So also, in a field so rapidly changing, a book is no sooner written than it needs revision, what is said on some point perhaps requiring correction or amplification because of events transpiring even while the book is going through the press. The writer must content himself with a measure of success in bringing his subject down to date of publication, trusting that the reader will supply his own addenda.

In one respect the plan of treatment adopted requires explanation — and possibly defense. A definite part of the book has been assigned to post-war developments in the field of international relations. This might be taken to imply a fundamental break with the past, the beginning of an entirely new era. Such is not the impression intended, of course. The movement following the War has been but a continuation of that which characterized international relations for some decades before — accelerated, to be sure, but not unlike either in objectives or methods. Nevertheless, the enormous impetus given to international government by the experiences of the World War, and by the Institutions set up by the Peace Conference, seems to justify a treatment which, however illogical it may superficially appear, serves to emphasize the achievements of the post-war period.

The term " international government " has been used with a freedom not fully sanctioned, perhaps, by current usage. Its propriety as a descriptive term in this field of political science is defended, and the sense in which it is used explained, in the first of the introductory chapters. The writer ventures to hope that if his book serves no other useful purpose, it will promote recognition of the fact that there now exists a system of law, institutions, and procedure fairly entitled to be called " international government " in the orthodox sense of the word " government."

No attempt has been made to append elaborate footnotes to the text, or to compile a bibliography on the topics treated. A few useful readings, accessible in most fairly well-equipped libraries, are noted at the end of some of the chapters; but for more extended references the reader may consult the bibliographies and other material referred to in a bibliographical note in Appendix A.

This being in no sense a text on international law, it should be unnecessary to observe that no attempt has been made to deal with all the topics embraced in treatises on that subject, nor, indeed, to discuss fully any single legal topic. Certain principles of international law are so closely related to the subject matter of this study as to require brief discussion. Assuredly some understanding of the basic theories as to the nature and attributes of those " legal persons," the states, which form the constituency, so to speak, of international government, is necessary to anything like an intelligent approach to a study of its structure and its problems. Accordingly Part II of the book is devoted to a discussion of states in their legal and community aspects. Neither in that connection nor elsewhere in referring to points of international law has extended citation of the works on international law been deemed necessary, the standard legal texts being easily accessible.

Writers in this field are strongly tempted to reproduce in appendices many of the interesting illustrative documents in which the literature of modern international relations abounds. Fortunately some of them do not resist the temptation, so that the more important material is available in a variety of places. Space seems to forbid the inclusion in the present work of more than the constitutions of the three institutions set up by or pursuant to the Peace Treaties — the League of Nations, the International Labor Organization, and the Permanent Court of International Justice. For the texts of other important documents the reader is referred, in the footnotes and in the bibliographical note mentioned above, to accessible publications.

Finally, the writer is persuaded that one of the major educational tasks confronting the world today is the promotion of a more adequate popular understanding of the principles and problems of international political life — a task which, as students in this field are keenly aware, has heretofore been sadly neglected. So only can the sure foundation be laid for better coöperation between peoples for international peace and good will. If this book, by stimulating interest in the subject with which it deals, helps in any measure to lay the foundation for a more intelligent and sympathetic approach to the study of international relations, and so contributes even slightly to the development of a better informed public opinion, it will have served its purpose.

EDMUND C. MOWER

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ABBREVIATIONS

Annals Am. Acad. — *Annals of the American Academy of Political and Social Science.*

A. J. — *American Journal of International Law.*

A. J. Official Documents — *Official Document Supplements to the American Journal of International Law.*

Duggan, *League of Nations* — *The League of Nations: The Principle and the Practice.* Edited by Stephen Pierce Duggan.

Int. Con. — *International Conciliation.* Published by the Carnegie Foundation for International Peace.

Monthly Summary — *Monthly Summary of the League of Nations.*

Proc. Am. Soc. Int. Law — *Proceedings of the American Society of International Law.*

W. P. F. P. — *World Peace Foundation Pamphlets.*

Part I

INTRODUCTION

CHAPTER I

NATURE AND ORIGIN OF INTERNATIONAL GOVERNMENT

I. Recent Adoption of the Term

It is sometimes said that definition should follow rather than precede discussion. However this may be as a general rule, where the propriety as well as the meaning of a term of general description may be fairly open to question, defense if not definition may well justify preliminary discussion.

What sanction is there, in accepted usage or in point of subject matter, for the term " International Government "? It must be admitted that its introduction into political discussion is recent and rather tentative. More than a decade ago J. A. Hobson published his book *Towards International Government,* a title suggesting a trend rather than an attainment. About the same time L. S. Woolf wrote his suggestive and valuable work entitled *International Government,* in which, after describing certain existing agencies of international government, he undertook to outline a general system to be adopted by an international conference at the close of the World War. Thus the treatise as a whole was both descriptive and prophetic. More recently Professor Pitman B. Potter wrote his book on *International Organization,* a valuable discussion of the systematized relations between states, and in some respects a pioneer treatise. In the last edition of this work, as in the first, the writer remarks in his introductory chapter that it is better, for various reasons, not to employ the obvious phrase " World Government " in characterizing his subject, explaining in a later connection that where the phrases " World Government " and " International Government " are used they are to be taken to mean international governmental coöperation.

Within the past decade appeared Jessie W. Hughan's *A Study of International Government,* in which the author justifies her choice of title by a brief definition of government, but without any attempt, by analysis, to apply the definition to the subject matter of her treatise. Several other works under similar titles have appeared recently.

It has been only within the past few years that catalogues of periodical literature have classified material dealing with international political affairs under the head of international government. As applied to a body of principles and a group of agencies, properly denominated governmental, and conceived of as constituting an international political system, the term " International Government " has concededly gained belated and rather tentative recognition in political discussion.

II. Government as Mechanism and as Function

Whether or not it can be used in the sense indicated with any approach to scientific precision obviously depends upon what is meant by government. In common speech, government is taken to signify a definite set of agencies, regulated by law or by custom having the force of law, whereby the public business of a politically organized group of people is transacted. Thus government is ordinarily conceived of as a very concrete piece of mechanism — a matter of legislatures, executives, and courts, the whole constituting a congeries of officials whose duties are legally defined. From this point of view government is *a* government, or *the* government.

But government may also be thought of, not as an elaborate political machine but, from the functional point of view, as signifying the exercise of authority in the administration of the affairs of a state, or society — that is to say, as a process rather than a mechanism.

Viewed from this angle it obviously matters little in what precise form the abstract idea of government happens to be embodied at any particular time or place. The function may be exercised by one man or by a mass meeting; in historic fact government has run the whole gamut between these two extremes. Certain eras have been characterized by the predominance of a single type — as, for example, the sixteenth and seventeenth centuries by autocracy, our own era by democracy. It is the task of political science to analyze and classify these various forms, with a view to the discovery of their modes of operation and their general relations to contemporary social life.

Diverse Forms and Theories of Government

Governments take one form or another for reasons largely apart from the essential characteristics of government in the abstract.

These reasons may be historical, or racial, or economic, or geographical, or a combination of some or all of these factors. Forms of government are never purely artificial in point of origin. The evolution of political organization, generally at any rate, is very largely controlled by economic and social forces, rather than by the outstanding personages who figure in history as political architects. These builders of governmental systems embody more or less completely the political consciousness of their peoples, and give it definite direction; they do not create it.[1]

Again, wide variations from age to age in the abstract theories underlying the prevalent systems of government have challenged the attention of contemporary thinkers, either to attack or to defend particular systems. Political speculation, moreover, not confining itself to existing governmental institutions, has ranged over a wide field of inquiry. What should be the theoretical relations between the state as an organized unit and the individuals so organized? How should the individual be safeguarded against extreme and unwarranted exercises of the power of government; or, in the phrase of Professor John W. Burgess,[2] how should the problem of reconciling government with liberty be solved? What should be the limits of governmental authority from the standpoint of the social group as a whole? Political philosophy has dealt with these and other like questions ever since the beginning of civilized life. It would seem that there are no final answers to them; that the great debate upon them will continue to the last chapter in the history of political thought.

But despite this diversity of forms and theories, one constant factor runs through the whole evolution of political science. In whatever way a people may organize their political life; whatever theories may dominate their thought as to this or that aspect of their governmental system, in fact they set their government to one task, and only one — that of transacting the public business. In essential function government has never varied from first to last. Of forms of government there has been no end; government has had but one fundamental purpose throughout the ages.

Now this distinction between governmental forms and governmental functions, and the point of it, are obvious. In coördinating a set of group activities, and analyzing them to determine whether they may or may not properly be termed governmental, the controlling factor is not mechanistic — that is, the precise organization of the agencies through which such activities are conducted — but functional, the essential character of the group interests subserved. Some form of organization there must be, of course, but it is not the essential thing. What is done, not how, is the test of a sound basic classification; and further, if agencies of a governmental character are discovered, are they substantial, coherent, and vital enough to be deemed, in the aggregate, a political system?

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[1] E. R. A. Seligman, *Economic Interpretation of History* (1924), 96 ff. refers to the " Great-man Theory."

[2] In the title of his book: *The Reconciliation of Government with Liberty.*

Essentials of International Government Exist

By these tests is there, then, a set of agencies and activities properly denominated international government? The answer to this question depends, in the first place, as already intimated, upon the character of the ends served by the machinery of international political intercourse, rather than upon the precise form of that machinery. If the student discovers agencies and established rules of conduct, of a political nature, scattered here and there throughout the domain of international relations, he has found, so far as these mechanisms and legal precepts go, the essentials of international government. And in the second place, the answer sought depends upon the extent to which these political elements have assumed definite, recognized, authoritative form.

Without pursuing this analysis into detail, it is the assumption of this study that the elements of a true system of international government do in fact exist. Clearly the rules, procedure, and personnel of international intercourse are essentially governmental; and to go a step further, and characterize them as constituting a system of government — as international government — seems fairly justified, especially in view of the remarkable extent to which, in recent years, international governing functions have been entrusted to permanent agencies.

It has seemed worth while to indicate the true criterion of a system properly termed governmental, not merely in justification of the title of this book, but especially because in the popular view of what constitutes a political system there is no such thing as international government. Nor is this to be wondered at. Modern government has become so definitely systematized, such a complex of interrelated agencies, as to obscure to the casual observer the essential characteristics of government. Indeed government has heretofore been viewed rather too much as a matter of forms and mechanisms, and too little as a process.[3] The search in the international field for agencies elaborated with the precision, and endowed with the powers, characteristic of national systems is indeed fruitless. But we are not on that account to lose sight of the true nature of the functions performed by such organization as does exist.

III. ORIGIN OF INTERNATIONAL GOVERNMENT

On the threshold of this study international government may profitably be viewed from another angle — that of origin and development. Anything like a history of international relations, even in outline, would transcend the limits of this book; it is proposed, rather, to point out how closely analogous are the forces which underlie the beginnings and the progressive development of government in the two spheres, national and international. Government began with the beginning of social life. The moment a group appeared with interdependent relations between its units, there arose the necessity of some sort of public authority to which the individual should be subject. The remote origin of government antedates recorded history; it was contemporaneous with the beginnings of social relationships and institutions — property, specialization in social pursuits, the necessity for measures to protect the individual and to defend and perpetuate the group.[4]

Government, then, is a social necessity. Whatever one's theories may be as to its proper form or scope, one must concede its inevitability in some form and within certain limits. The theory of the anarchist is without logical basis, as Professor Willoughby has pointed out.[5] To banish existing forms of government from society would be to pave the way inevitably for some other form of group control not distinguishable in essence from government.

> The isolated individual of the philosophical anarchist is as remote from actual life as is the economic man of the Ricardian theorists. He is a mere abstraction.[6]

Every society of a permanent character implies organization and government of some sort — the rudiments, at least, of a state.[7] A non-political order of civilized society is logically inconceivable.

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[3] A. F. Bentley's *The Process of Government* (1908) is highly suggestive on this point.

[4] See W. W. Willoughby, *The Nature of the State* (1911), Ch. III.

[5] *Ibid.*, 318–320.

[6] F. J. C. Hearnshaw, *Democracy at the Crossways* (1919), 292–293.

[7] W. S. McKechnie, *The State and the Individual* (1896), 4.

Theories of the Origin of Government

But man has not been content to submit to governmental authority without some philosophical explanation of its origin. The moment he became politically self-conscious he began to speculate about the genesis of this universal phenomenon, and to propound theories to account for it. From Aristotle down a line of thinkers have held that government developed out of the inherent nature of man as a political animal, being fundamentally the result of his instinct for association. Others have advanced the theory that the origin of government, and the basic factor in its development, is to be found in force, the aggressive instincts of the stronger resulting in the subjection of the weaker to their authority. The so-called contract theory was widely held during the latter part of the Middle Ages and up to the early eighteenth century. In brief, this theory assumed that men originally lived in a state of nature, emerging from it into political association by force of a mutual agreement whereby they undertook to set up and obey an external authority. Still others have seen in the play of economic forces the clue to the political development of mankind, government being the result of the economic exploitation of class by class. Other theories have been advanced from time to time.[8]

The sound view seems to be that government is the result of a process of social evolution which has been more or less influenced by all the particular aspects of human life stressed by these various theories. The beginnings of government were coeval with those of human association. Social relations as they developed out of the primitive state into a vast complex of rights, duties, and obligations inevitably generated forms of social control, and developed agencies for the coördination of the mechanism of control — agencies now embodied in the systems of national government which characterize the present world order.

Social Basis of International Government

This principle of social development — the evolution of man as a political animal — need not be further discussed. The significance of it for this study is that it is as dominant and universal in the international as in the individual sphere. Perhaps a more exact statement would be that man has two sets of relationships, one as between individual and individual, the other as between group and group; and that in both he is the same political animal. As to political origins, what is true of individuals in their social relations is equally true of groups politically organized. The moment it became possible to speak with precision of a " family," or " society," or " community " of nations — terms implying group relations, the interdependence of group upon group, intergroup interests both mutual and antagonistic — that moment international government became not only a social convenience but a social necessity.

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[8] For a brief account of these various theories see Haines and Haines, *Principles and Problems of Government* (Rev. Ed., 1926), 32 ff. See also Willoughby, *op. cit.*, Chs. III, IV, V, and VI; J. W. Garner, *Introduction to Political Science* (1910), Ch. IV.

This point cannot be too strongly emphasized. In current discussion of the relations between modern states it is not infrequently assumed, tacitly if not expressly, that each state has a legitimate choice of social alternatives, so to speak; in other words, that each may elect to live its life in its own way untroubled by group obligations towards other states — the isolationist position; or may frankly acknowledge its membership in a closely knit community of states, and the political and social obligations incident thereto — the internationalist position. Within certain limits this alternative does exist, but those limits are narrow and inexorably becoming narrower. Just as the multiplying social contacts of the individual leave him scant option as to his essential everyday relations with his fellows, so the tightening bonds of international life virtually coerce the state. The monastic ideal of personal life is no more obsolete than is that of the hermit nation.

The rise of a society of nations in the most literal sense of the term is the outstanding political phenomenon of our time. So rapid and so revolutionary has been the process, that political thought has failed to keep pace with it, or to adjust contemporary life to its implications. Political concepts descended from, and appropriate to, an age of group isolation, still dominate international politics; and machinery of control ill-adapted to a closely integrated intergroup life still serves as a reminder of the hiatus between the old order and the new.

IV. Development of International Government

Again, the essential forces that have conditioned the development of government have been much the same in the national and international spheres. Going no further back than the era which saw the emergence of the modern state system — say the fifteenth and sixteenth centuries — we find national governments comparatively simple in structure and limited in function. The monarch was concerned chiefly with the maintenance of his power at home and the enlargement of his prestige and possessions abroad. Taxation was primarily a means to these ends; to them was the welfare of the individual subject largely subordinated. The machinery for revenue-raising, the military organization, officers to enforce the royal decrees, and to administer justice constituted the essential organs of government.[9] As for the individual, his life was embraced within the confines of his little community, beyond which neither his economic needs prompted him to trade, nor his intellectual tastes to travel. The great outside world was to him a *terra incognita;* upon it he felt no dependence; in it he was conscious of no interest.[10]

Influence of Economic Factors

At length new social forces began to appear. Commerce, broadening its scope, reached out for markets and sources of supply beyond frontiers and overseas. Cities, nourished by this new commercial activity, came to be centers of influence and power, raising governmental problems peculiar to themselves. The exigencies of commerce necessitated the creation of merchant fleets, the building of highways and making them safe avenues of trade, and the organization of systems of currency and exchange to facilitate the operations of commerce. To the individual, the world beyond his little community became infinitely more spacious, his relations with his fellows at home more intimate and complex. The era of discovery and colonization unlocked resources in distant lands hitherto undreamed of. At length the Industrial Revolution dislocated the whole social structure of Western Europe and gave rise to questions of internal policy both novel and difficult.

Finally came the upheaval of the French Revolution, out of which modern democracy emerged. The inherent rights of man, now precisely formulated and vigorously asserted, implied corresponding obligations on the part of government — obligations of positive nurture as well as of negative protection. Gradually the whole theory of government as a mere bulwark against class or individual oppression — the theory of *laissez-faire* — gave way to that of government as an active, affirmative agent for the promotion of social ends.[11] The enormously broadening scope of governmental activities necessitated a corresponding multiplication of laws and administrators, until modern government has become a huge and intricate piece of machinery, touching the citizen and his concerns at numberless points, regulating group interests within the state, and promoting in myriad ways the welfare of a highly organized society.

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[9] "There was a time," says Charles A. Beard, "when the functions of administration were few and simple. They consisted mainly of tax collection and the maintenance of order; the record keeper and the warrior were the prime agents of the state." *American Government and Politics* (5th Ed., 1928), 38.

[10] For an interesting picture of the social horizon of the great European peasant class of the sixteenth century see C. J. H. Hayes, *Political and Social History of Modern Europe* (Rev. Ed., 1924), Vol. I, Ch. II.

And this vast transformation has profoundly influenced the life of the individual. No longer are his interests localized; they have become world-wide. Economic independence has become economic dependence. Industrially his activities have become highly specialized; he is but a single infinitesimal cog in a huge social and economic wheel. Moreover, the whole world is brought to his door, so to speak, by the telegraph and the printing press, and latterly by the radio. Once a provincial, he is now a cosmopolite.[12]

Nor has the political movement which has accompanied this transformation been unopposed. Mr. Bernard Shaw, in a recent address on democracy, remarked that while men recognize the necessity of government, and inevitably set up governments with authority over them, the moment that authority is exercised they instinctively rebel against it. So the vast increase in the range and vigor of governmental power in the modern state has been bitterly resented and condemned by those who are naturally in revolt against authority, as well as by those who fear its ultimate effect upon the liberties of the individual. But the movement has been inevitable. Just as primitive government had its beginnings in the necessities of human association, so modern governments have become highly specialized to meet the requirements of a complex social order. The process is cosmic; wise statesmanship may guide and temper it, but it seems destined to continue so long as society falls short of a perfection that would make government superfluous.

Rise of a Society of Nations

Now an identical movement is discernible in the realm of international relations. When intergroup trade was a mere matter of private initiative and profit, in no sense vital to the collective welfare, and local industry sufficed to supply all local needs; when political contacts between nations were comparatively rare and chiefly of a formal diplomatic character; and when wars were regional quarrels in which non-belligerent nations had slight if any concern, there was no need of an elaborate mechanism of international control. International legal regulation rested upon meager customary rules dealing mainly with the conduct of war, maritime commerce to a limited extent, and the exercise of the diplomatic function. As for the machinery of intercourse, the embassy and the consulate sufficed save on special occasions like the negotiation of important treaties of peace.

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[11] In a recent lecture Graham Wallas described the transformation by saying, in substance, that governments used to exist to see to it that bad things were not done; now they exist to see to it, also, that good things are done.

[12] For a vivid picture of the rôle of government in modern life see Beard, *op. cit.*, Ch. I.

To contrast the modern family of nations, in their external relations, with that of three centuries ago — or with that of one, for that matter — is to envisage a new world. Contacts between states are now continuous, vital, infinitely varied. Moreover, interstate relations are no longer merely political in the narrow sense; they are social, financial, commercial — in other words, precisely such relations as imperatively call for regulation within the state. The development of steam navigation has covered the seven seas with commerce, a veritable artery of life blood between the nations. The cable, the wireless, fast ocean-going ships, and the airplane have annihilated distance, bringing the nations more closely contiguous today than were the provinces of any single nation in the old days.[13]

This amazing contiguity has given rise to problems undreamed of in any other age of the world — the need of dealing coöperatively with a wide range of matters of common concern, matters highly essential to the welfare of nations. The more important of these interests and the measures taken to deal with them are discussed in the following pages.

In a word, the nations today constitute a community in the most literal sense, the prosperity of each directly and substantially related to that of all the others. No system of national industry but is materially affected by industrial conditions in other countries. The old mercantilist theory of commerce, according to which one country necessarily gained and another lost by the exchange of commodities, has given place to the theory of mutual advantage. No system of thought, no art, no science is so national as to be untouched by foreign influence. "Indeed, there is no section of life which is isolated from the action of international interchange."

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[13] This modern miracle is still but dimly appreciated. It could be illustrated in every realm of human life; but take it in the field of finance. The stock exchanges of New York and London can follow each other's transactions almost as instantaneously as though they were housed under the same roof; whereas, a hundred years ago it took days to get financial information from London to Liverpool. Roth Williams, *The League of Nations Today* (1923), 108. This transformation is vividly pictured by John Herman Randall, *A World Community* (1930), Ch. I, on "The New Means of Communication."

As to international war, it is hardly an exaggeration to say that war on an important scale anywhere is virtually war everywhere, so delicately adjusted are the interrelations of modern states. Thus the development of the art of warfare — its inconceivably destructive chemical and mechanical allies, its world-wide effects in disrupting normal commercial relations, and its sinister invasion of two new realms, the air and underseas, — all this presents a problem for coöperative solution literally vital to civilization.[14]

International Government a Social Necessity

It was to meet the exigencies of this new world situation that modern international government came into existence, obeying the same iron law of social necessity that has dictated the growth of government in the national sphere. In both realms complexity of life means complexity of governmental organization. Systems of legal control do not come into existence until demanded by the social organism; then they inevitably appear. Law and society are mutually dependent.

> Without society no law; without law no society. When we assert that there is such a thing as international law, we assert that there is a society of states; when we recognize that there is a society of states, we recognize that there is international law.[15]

Substitute for law in the narrow sense the more inclusive idea of political organization, and the statement quoted is equally true. What Professor Reeves, in the article cited, calls the "facts of international life" have dictated not only "the reconsideration of international law" but an overhauling of the whole machinery of international intercourse.

The amount of government requisite at any particular time in any particular society, said Sidney Webb in a recent address, is roughly proportional to the complexity of the society in question. If the development of international government has hitherto been comparatively slow and halting; if it has not yet attained anything like the completeness, in form or function, of the more advanced national governments, it is because social contacts have not hitherto been constant and intimate enough to necessitate a more elaborate political system. And if, on the other hand, international organization has advanced in recent years at an unprecedented pace, it is because a revolutionized international society has demanded a more elaborate mechanism of control. Adjustment to environment is a law of life, disobeyed at the peril of retrogression and decay; and the facts of modern international life, to use again Professor Reeves's expressive phrase, constitute the new environment of civilized man today. Hardly yet realized in all its implications, the truth is that this environment is fundamentally unlike that of any other age of the world. In the brief space of a century inventive genius has transformed it until it has become literally international.

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[14] For an interesting brief sketch of the historical development summarized above see C. Delisle Burns, *International Politics* (1920), Ch. I.

[15] Jesse S. Reeves, "International Society and International Law," 15 *A. J.*, 368 (1921), quoting Westlake.

> These changes of the last hundred years have created a new world society. All of the peoples of the world have been drawn into a single world community which bears little resemblance to the world of separate and self-contained states upon which the nineteenth century dawned.[16]

Thus it seems clear that international government, in point of origin and growth, does not constitute a unique political phenomenon. Like the political institutions of the states themselves it has responded, albeit inadequately, to the necessity of regulating the manifold interrelationships of modern life.

International Government Consistent with Sovereignty

Moreover, the international movement, like the national, has had, and still has, rather uncompromising opponents. Just as the individualist sees in the enlarging sphere of domestic government a corresponding diminution of personal liberty, so the nationalist is apt to view with jealous eye advances in international government, fearing lest the sovereignty of his state be impaired thereby. The instinctive revolt against authority has been reinforced by sentiments of patriotism. International organization, it is argued, involves the surrender of power by the state concerned, and therefore by so much is its sovereignty diminished. Individual liberty, so this logic runs, consists in the ability to govern one's actions at will; the freedom of the state likewise implies the unrestrained right to determine its own policies and actions.

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[16] M. O. Hudson, *Current International Coöperation* (1927), 11.

The fundamental point involved in these views is too large for discussion here, beyond the suggestion that both lose sight of the true nature of liberty. Liberty and restraint, in the political realm, are not antagonistic but entirely consistent concepts; indeed, true civil liberty implies restraint — the surrender of an individual "right" for a larger and more valuable social immunity. Within its legitimate sphere international government not only does not diminish, but actually augments, the true sovereignty of the state; for the state is more than recompensed for its surrender of abstract rights by the enjoyment in return of far more valuable privileges and immunities. It is as true of states as of individuals that their real liberty is within the law; that is, within social restraints freely accepted by them in order to conserve their own as well as the common good.[17]

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[17] To illustrate: Many states have lately joined in an agreement — the Pact of Paris, or Kellogg Pact — to renounce war as an instrument of national policy; but in return for such renunciation each state has gained immunity from aggression on the part of every other state, to the extent, at any rate, to which the Pact proves effective in promoting settlements by pacific means. In other words, a "right" has been exchanged for a potentially far more valuable immunity.

CHAPTER II

FACTORS CONTRIBUTING TO THE RISE OF MODERN INTERNATIONAL GOVERNMENT

I. QUICKENED MEANS OF INTERNATIONAL COMMUNICATION

But after all, international government has made comparatively slow progress, not entirely, or chiefly, because of the attitude of mind alluded to in the previous chapter. An overheated nationalism has stood in its way, to be sure; but as a matter of fact, until recently, conditions have not been such as to make any systematic development of it possible. The history of domestic government demonstrates that group life, to afford the basis for political organization, must have a considerable degree of homogeneity. There must be a desire for political organization, substantial agreement on the fundamental principles of civil and religious liberty, and a general disposition to yield to some common authority. Without a certain psychological background, a fundamental spiritual and intellectual unity in the group, political organization is at best difficult, if not impossible.

Now these basic conditions of a sound national life can exist only as the result of political education and experience. They are not a supernatural endowment, but a laborious acquisition. In these democratic days, at any rate, they presuppose all the various agencies necessary to lay the foundation of a true public opinion — education, freedom of speech, the right of political association, the wide and constant interchange of political views. It was not a mere historical coincidence that democracy followed the printing press, and came into its own with the advent of steam and electricity, for without this machinery of intercourse genuine popular government would have been impossible.

Referring to the fact that the framers of the American constitution did not contemplate popular control of the government they were creating, Henry Jones Ford remarks that the idea could hardly have occurred to them, for " public opinion in the modern sense of the word is a very recent thing." " Who then," he continued, "could have dreamed of the great series of inventions which have transformed the world? These elaborate networks of railroads and telegraphs, the product of a social activity which has meanwhile been making corresponding gains in public education and popular intelligence, are nerve filaments of the body politic, giving it an organization and a sensitiveness that constitute it a new being, unknown before since the beginning of the world." [1]

The New Cosmopolitanism

Analogous conditions have been essential to the progress of international government. Until comparatively recent times continuous and effective international coöperation was impossible because of the remoteness of state from state. Moreover, political association between peoples differing widely in social standards, economic interests, and political organization was at best difficult and unfruitful. The situation was further complicated by religious differences. Finally, there could be no such thing as true international public opinion when diplomatic dispatches and political news travelled in sailing vessels or saddlebags, and when such international gatherings as have come to be the commonplaces of our day were quite impossible.[2]

Now all these handicaps to international coöperation have been largely removed. Steam and electricity have annihilated distance. A process of international standardization is making rapid progress. What has been aptly called a "new cosmopolitanism of travel, communication, industry, commerce, and finance" is transforming the life of the world.

> No spot on earth is now immune from a bombardment of travel and trade, whose bearers are always impatient of two things, the nuisance of the frontier, with its arbitrary demands, inspections, delays, and the nuisance of doubt about the minimum of safety or justice implied in political life. The combined force of all these wandering nomads is now so great that it has a perceptible action like the eternal wash of waves in spreading a common level of primitive political assumptions everywhere, creating something like a universal statehood.[3]

But the diminution of the "nuisance of doubt" as to safety or justice brought about in recent years through formal international agreement and mutual understanding is itself an impressive evidence of modern cosmopolitanism. The liberality of treatment and the measure of protection accorded aliens in all civilized countries is in striking contrast with their legal status in all the earlier ages of the world. "It is throughout a modern idea that law should be made an international benefit; and the position that prevails today is as remote as the heavens from that of antiquity," when "he who was not a citizen possessed no jural right."[4] In essential respects the alien is now everywhere recognized as possessing legal rights comparable with those of the citizen; and generally speaking, he may acquire the full rights of citizenship by naturalization. This must be accounted an important factor in the development of international government, not only diminishing occasions for friction between nations, but through the friendly contacts of their peoples promoting a better understanding and a greater readiness to set up agencies of coöperation.

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[1] *The Rise and Growth of American Politics* (1914), 64–65.

[2] On this point see H. E. Houston, *Blocking New Wars* (1918), 35 ff.; Roth Williams, *The League of Nations Today* (1923), 19 ff.; David Starr Jordan, *Democracy and World Relations* (1918), 102–104.

[3] W. E. Hocking, *Man and the State* (1926), 114.

The marvel of our age is the rapidity with which intelligence is transmitted throughout the world. Too familiar to require comment, its enormous influence upon every department of human life cannot be overestimated. It is transforming international politics. When those responsible for national and international policies in every capital in the world are able to know almost instantly what is publicly transpiring in every other capital, and when intelligent people everywhere can hold in constant view political events and movements throughout the world, a foundation has been laid for something approaching a world public opinion.

These influences have become world-wide, penetrating even the conservative Orient. Mechanical and scientific progress, as exemplified in modern methods of transportation, communication, and mass production, is making itself felt in Turkey, China, and throughout the East. Old ideas are being scrapped, ancient traditions abolished, and the barriers separating Eastern nations from each other and from Western countries broken down.[5] Religious differences no longer seriously hinder coöperative relations between nations.

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[4] Quoted by David Jayne Hill, *World Organization and the Modern State* (1911), 83, where the "outlawry of the stranger in primitive times" is discussed.

[5] Report of round table conference at the Williamstown Institute of Politics on the nationalist movement in such countries as Turkey and China, *New York Times,* August 5, 1928.

II. Influence of Private International Associations

Another powerful internationalizing influence of recent years has been the rapid multiplication of private international associations.[6] These associations assume different forms; the predominant type, however, is federalistic — that is, the association made up of national units. Periodical conferences are held, at which the various units are represented by delegates, for the consideration of the special interests conserved by the association. Literally, hundreds of these associations exist, and the range of their interests is enormous.[7] The number of their meetings has increased steadily and rapidly during the past century. For example, in the decade 1840–1849, a period closely contemporaneous with the beginnings of modern ocean transportation, there were ten such meetings, while in the five years 1910–1914, there were four hundred and fifty-eight.[8]

In one respect the unofficial congress tends, even more strongly than the official congress, to promote the solidarity of the world. Its members come together as servants of no master. They meet on a common footing. They are responsible only to themselves. As scientific investigators, or men of similar business pursuits, or perhaps humanitarians, they are drawn together by natural tendencies.[9]

III. Influence of Democracy

The fact that democracy has become the predominant type of government throughout modern society has undoubtedly given an impetus to international government. Its direct effect upon the movement towards international peace and coöperation remains to be demonstrated, but indirectly it has promoted that movement. As already pointed out, the indispensable basis of international government is a common stock of customs, ideals, and social interests among the nations, and particularly in the realm of politics. Hence, in moulding forms of government to a fairly uniform type, democracy has had an immense standardizing influence upon international life, and thus has paved the way to a more sympathetic understanding between alien peoples. Not only has the virtual conquest of the world by democracy in itself helped to lay the necessary foundation of a system of world politics; recognition of the fact that democracy is faced everywhere with much the same sort of problems, varying only in degree, has had a similar effect.

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[6] On this general subject see Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), Ch. III.

[7] The Handbook of International Organizations published by the League of Nations reveals the surprising number and variety of these associations. To illustrate, agriculture is represented by more than a score of them, dealing with interests ranging all the way from bird protection to seed-crushers; labor by nearly forty, sport and travel by some twenty-five; humanitarian, religious, moral, and educational interests by more than a hundred, perhaps the most comprehensive of which is the League for the Defense of Humanity.

[8] Potter, *op. cit.*, 38, note.

[9] Simeon E. Baldwin, "The International Conferences and Congresses of the Last Century as Forces Working Towards the Solidarity of the World," 1 *A. J.*, 565 (1907) at p. 573. See *Ibid.*, 808 ff. for list of the more important public and private international conferences, congresses, or associations of the past century. See also Edward Krehbiel, *Nationalism, War and Society* (1916), Ch. XV.

The student of comparative government is deeply impressed by the essential likeness of the main political issues with which modern states are confronted. The business of government is to direct the resources of the state to certain primary ends, and these basic ends vary from state to state within extraordinarily narrow limits. Indeed, one may go further and say that the means to attain these ends, the mechanism and processes of government, are fundamentally alike in all progressive countries. The importance of this factor cannot easily be overestimated. Whether or not democracy be still on trial, and whatever the ultimate type of government may be, a pretty uniformly democratic world is a world with a substantial basis for international coöperation.

The democratic movement, moreover, is strikingly indicative of what is going on steadily in other regions of thought and other spheres of action. In the social sphere a similar tendency towards standardization is discernible. In what he eats and wears and in his forms of etiquette; in the mechanical appurtenances of his daily life — his means of locomotion and the like; in his forms of entertainment and recreation; and in his habitual modes of thought and his non-rational impulses, civilized man is much the same the world over. Wherever the influence of modern inventive genius is felt — and it is ubiquitous — men have come under its imperious sway, until the picturesque world of other days can be discovered only in isolated corners of the globe.

Other influences have contributed materially to the recent movement in international politics. Among them may be mentioned the dominance of a more paternalistic theory of the scope and functions of government. The *laissez-faire*, negative attitude which characterized national governments in the eighteenth century, and well into the nineteenth, was not favorable to the development of international coöperation. The prevailing disposition was to distrust government and to minimize its functions. Authority was feared and resisted, the familiar motto being: "That government is best which governs least." But when the rôle of domestic government became vigorously positive rather than negative; when it began to project itself into a wide sphere of individual relationships at home, it was natural and inevitable that it should more and more interest itself in the welfare of its citizens abroad. Nor did the growing commercial interests, finding government economically useful in the domestic sphere, hesitate to invoke its aid in foreign fields. Thus when the commercial interdependence of nations came to demand coöperation between their governments, statesmen were not hampered by abstract theories as to the legitimate limits of governmental authority.

IV. Influence of Federalism

The successful organization of federal governments in modern times has without doubt materially influenced the development of international government. The fundamental problem is the same in both forms of organization — that of reconciling the more or less conflicting particular interests of the several groups to be brought within the union, with the general interests of the union as a whole, and of establishing adequate authority to deal with such common interests.[10] In principle international government necessarily takes the federal form; for federalism is a compromise between a multiple and a unitary state system. To put it another way, referring specifically to international organization, the federal form of international government is a compromise between a system of independent states living in political isolation and a world state. In terms of world politics the extremes between which international federation may be said to stand are empire, on the one hand, and cosmopolitanism on the other.

World empires have been attempted in historic times, and in the case of Rome substantially realized; so, also, in former ages the world has achieved a very considerable degree of cosmopolitanism. Apart from the fact that the basic principle of the modern state system — nationality — is inconsistent with both these types of organization, and in essence hostile to both, it is demonstrable that, in tendency, both empire and cosmopolitanism would be inimical to the welfare of the individual — empire because it would unduly exalt authority, and cosmopolitanism because it would undermine authority. Thus international federation seems to afford the means of realizing a higher degree of world unity without the hazards which attend its alternatives.[11]

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[10] On International Federation see Potter, *op. cit.*, Ch. XIV.

The analogies between federal systems like those of Switzerland, the United States, Canada, and Australia, and the organization of the modern state system are close enough to be instructive. Just as the creation of these national systems involved the fundamental problem of a division of powers between the component parts and the federal state — in other words, the creation of a general fund of power to be drawn upon for the common good, while leaving special interests to be dealt with locally, so international governmental organization proceeds upon essentially the same principle — the creation by the several states of common agencies endowed with the requisite authority to deal with problems of international concern.[12]

These analogies, while close in principle and highly suggestive, may easily be pressed too far, especially if urged, as they often are, to minimize the difficulties which confront international organization. The history of federalism demonstrates that this type of political organization can be established only under the most favorable conditions, and that its success depends upon a very considerable degree of homogeneity in respect to the essential factors of national life. Students of federal government in the United States understand the grave difficulties attending its creation, despite the genius of its architects and the powerful considerations which dictated its wisdom. Nor should it be forgotten that one of its most essential principles — the supremacy of the national power within its constitutional sphere — was finally vindicated only after three-quarters of a century of internal controversy culminated in a devastating civil war.

One most significant fact in the development of modern federal government should be noted for the light it throws upon the probable future of international government. Once a federal system has been firmly established, the central power tends to increase at the expense of the local jurisdictions. This has been conspicuously true in

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[11] See Potter, *op. cit.*, 13 ff.

[12] On this subject see James Brown Scott's interesting and valuable treatise: *The United States of America: A Study in International Organization* (1920). See also Philip Marshall Brown, *International Society* (1923), 116.

Switzerland and the United States. The centripetal forces in the system have overmatched the centrifugal, resulting in a marked disturbance of the equilibrium originally created.[13] This tendency is attributable to precisely the same social forces that are bringing modern international government into existence and steadily widening its sphere — the annihilation of distance, which in turn has made close coöperation between hitherto isolated groups practicable, and the rapid growth of social and economic interests that demand unified control.

V. Economic Internationalism

But after all, the master motive behind international organization has been economic. Allusion has already been made to what is known as the economic theory of the origin of government, according to which government came into existence as the result of economic struggle between classes, those in authority being the victors in this struggle and the vanquished their subjects. This theory cannot be accepted as an adequate account of the rise of political power; but it is demonstrable that the whole course of politics has been profoundly influenced by economic considerations.[14] This is profoundly true of international politics. To elaborate the point here would be to go beyond the limits of this study; but it should be briefly summarized in any account of the controlling factors in the development of international government.

This economic influence was immeasurably heightened by two epoch-making developments of the last hundred and fifty years. First in point of time was the industrial revolution beginning in the second half of the eighteenth century. In a comparatively brief period English industry was completely transformed by a series of great mechanical inventions, especially in the textile and iron manufactures. Steam was applied to machinery, and machinery, in due time, to practically every industry. The cotton gin was invented, the spinning wheel gave way to power spinning, the hand loom to the power loom. Thus the whole industrial world was revolutionized.

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[13] On the play of centrifugal and centripetal forces in constitutional government see James Bryce, *Studies in History and Jurisprudence* (1901), Essay IV.

[14] On this general subject see Charles A. Beard, *The Economic Basis of Politics* (1921); Seligman, *op. cit.* E. W. Crecroft, *Government and Business* (1928), makes clear the intimate practical relations between business and the whole social basis of modern life. R. J. Swenson, *The National Government and Business* (1924), discusses this subject from the standpoint of the United States. *Cf.* John Herman Randall, *A World Community* (1930), Ch. II, on "The New Economic Organism."

> Scientific discoveries increased the efficiency of industry. Chemistry and physics, biology and geology all contributed to laying the foundation of that complex industrialism which has led to the characterization of our life as a machine civilization.[15]

Now the obvious result of this economic movement was an enormous increase in the productive capacity of industry; and this in turn had profound political results, not the least of them being a renewed interest in colonies as sources of raw material for the new industrial machine, and as potential markets for its products.

At length the second great economic development above referred to appeared — the application of steam to transportation; it might well be called a second phase of the industrial revolution. The appearance of the steam locomotive on land and of the iron-hulled ocean-going steamship transformed almost overnight the character of both land and sea transportation. Freight-carrying capacity was so greatly increased that bulky manufactures and raw materials could be transported rapidly and cheaply to and from distant parts of the world, and the products of European industry sought the remotest markets. This new world system of transport, made still more effective by the invention of new methods of communication, such as the telegraph, the cable, and more recently the radio, has transformed the world into a single great economic unit.[16]

During the last quarter of the nineteenth century another phase of this transforming economic movement appeared, namely, the close coöperation between science and industry. The scientist no longer confined his research to purely abstract ends, but devoted himself to the promotion of contemporary economic life; while the manufacturer, in turn, was quick to realize that collaboration with the scientist was profitable. So that before the end of the century the laboratory had found an important and profitable place in the factory.[17]

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[15] W. S. Culbertson, *International Economic Policies* (1925), 6.

[16] *Ibid.*, 14. For an interesting brief sketch of this development see Achille Viallate, *Economic Imperialism and International Relations During the Last Fifty Years* (1923), Introduction. See also Herbert A. Gibbons, *Introduction to World Politics* (1922), Ch. II, on "Nationalism and Steam Power." On aviation as a factor in modern international communications see statement by Colonel Charles A. Lindbergh to the League of Nations Conference on Aviation, *New York Times* of July 8, 1930; and his radio address on international aviation, *New York Times* of August 9, 1930.

[17] Viallate, *op. cit.*, 163.

Economic Interdependence of Peoples

One of the important results of this enormous increase in industrial efficiency, and in the facility with which the products of industry could be distributed throughout the world, has been a high degree of economic interdependence. The individual no longer supplies his own wants by his own labor. His ability to supply them from distant parts of the world has made him dependent upon the labor of remote peoples. He becomes a specialist in industry, producing something, or contributing to the production of something, which he exchanges for the fruits of other specialized industries, domestic or foreign.

So, also, nations are no longer self-sufficient. The division of labor made possible by machine industry and the development of transport, and the unequal distribution of the necessary raw materials, has led to industrial specialization as between nations, so that there is a high degree of international economic dependence. Even those nations most nearly independent industrially lack many raw materials essential to a well-rounded economic life.[18] In brief, these epochal changes of the past hundred and fifty years have brought into existence a new economic world — a delicately adjusted society in which any serious disturbance of the mechanism of production and distribution has far-reaching and disastrous consequences.[19]

In two respects, at least, this revolutionary change has had a direct effect upon international relations. First, each group of people have come to depend more and more upon foreigners for the satisfaction of their daily wants and for the raw materials essential to the earning of their daily bread. A sense of this dependence may not be widely felt as yet, but the more it is realized the more readily men yield to measures to increase the security of the indispensable channels of trade.[20]

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[18] See Fred I. Kent, "Interdependence of the United States and Europe," 102 *Annals Am. Acad.*, 168 (1922); Norman Angell, *America and the New World State* (1915), Part I, Ch. I; W. C. Redfield, *Dependent America* (1926); Francis Delaisi, *Political Myths and Economic Realities* (1927), Part II; C. Delisle Burns, *A Short History of International Intercourse* (1924), Ch. V; M. O. Hudson, *Current International Co-operation* (1927), 5 ff.; Sir George Paish, *A Permanent League of Nations* (1918), Chs. III and IV; F. A. Vanderlip, *What Happened to Europe* (1919), Ch. 15; Henry M. Robinson, "Some Lessons from the Economic Conference," 6 *Foreign Affairs*, 14 (1927).

[19] For typical studies of international economic questions see Culbertson, *op. cit.*, entire; C. Delisle Burns, *International Politics* (1920), Ch. V; G. M. Fisk and P. S. Peirce, *International Commercial Policies* (1923). See also B. H. Williams, *Economic Foreign Policy of the United States* (1929), for a special study in this field.

Development of International Trade

The interdependence of nations is real and world-wide. International commerce is no longer the mere interchange of goods between two nations, unrelated to like interchanges between other nations. Every international trade movement affects, directly or indirectly, the whole fabric of world commerce.

International trade is no new thing, to be sure; but until the application of steam to transport it was largely of local importance. Sir George Paish has pointed out that a century ago the foreign commerce of the world totalled only about four hundred million pounds per annum, but that in the century just prior to the World War this volume of imports had increased to some four billion pounds per annum. He sums up the results of this enormous expansion of trade as follows:

> In brief, whether the economic condition of the world is examined in detail or comprehensively, the fact that the whole race now forms one economic family, each member of which is dependent for its well-being upon all the rest, is convincingly evident. In economic matters one no longer thinks nationally but internationally.[21]

It is pointed out that business employs the one truly international language — that of figures, understood in every country. Today money is international, having gold as a common basis; credit based on gold is international; commerce based on money and credit is international. So also the network of agencies by which money and credit are employed in commerce is international.[22]

This new international commerce has been mainly in private hands.[23] From the first, however, governments have encouraged it by the adoption of various domestic policies — by the protection of the home market through tariffs, by means of bounties and subsidies, by the organization of trading companies, and by other economic measures. Through their consular services and their departments of commerce and foreign affairs governments keep in touch with trade conditions and opportunities throughout the world, and financiers are quick to take advantage of the information thus placed at their disposal. If a government deems it wise to promote its commercial interests in a given region it naturally turns to the financiers for the necessary capital, and thus an understanding between them results. In this way governmental interests and financial enterprises come into close association, making it often difficult to say, as Burns points out, " whether the politicians are using the financiers, or the financiers the politicians." [24]

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[20] Speaking of the popular failure to realize this economic dependence, Redfield, *op. cit.*, says: " We are warned, indeed, that some essential materials are under alien control, but one would never guess from what is said that every American home and every American life depends daily upon the continuous labor of masses of our fellow men in other lands for indispensable supplies that we cannot produce." Preface, v-vi. See also Elihu Root, " Steps Toward Preserving Peace," 3 *Foreign Affairs,* 351 (1925).

[21] *Op. cit.*, 95.

[22] Houston, *op. cit.,* 37. The recently established Bank for International Settlements is a striking illustration of fiscal internationalism. On this new international institution see Ch. XXIX, Sub. III.

[23] In some instances, however, governments have directly participated in business enterprises.

Moreover, governments exercise a close supervision over the private investments of their citizens in foreign countries, not only to prevent abuses that might arise because of hard capitalistic bargains in the weaker countries, or in undeveloped regions, but also as a matter of national policy.[25]

Modern Imperialism

International trade is largely responsible for modern imperialism — one of the most significant movements of the past century. Imperialism is not easily defined; it takes on different meanings according to the particular point of view. It may be primarily political, as when it results in the acquisition of colonies or naval bases for strategical purposes.[26] Again, it may be primarily economic, concerning itself chiefly with the promotion of foreign commerce. In general terms, it may be said to mean the projection of the national power, or of economic interests more or less dependent upon the national power, out beyond the national boundaries — the acquisition of foreign territory, spheres of influence, or commercial privileges. The desire for markets and essential raw materials prompts traders to seek them in distant regions; capitalists penetrate undeveloped countries for investment opportunities.[27] Moreover, governments are easily persuaded that it is in the public interest to foster private enterprise of this character, thus forming alliances between business and politics of increasing concern to international government.

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[24] C. Delisle Burns, *International Politics* (1920), 79.

[25] For the policy of the United States, and of some foreign governments, in this matter see R. L. Buell, *International Relations* (Rev. Ed., 1929), 410–412.

[26] For illustrations see *Ibid.*, 312 ff.

[27] See *Ibid.*, Part II, for a good treatment of this whole subject.

Imperialism has brought nations into vigorous and oftentimes dangerous rivalry; and thus it has demonstrated the necessity, if international peace is to prevail, of substituting friendly coöperation for unfriendly competition in those undeveloped parts of the world which have been aptly called the "Stakes of Diplomacy." [28] So also imperialism, by accustoming statesmen to foreign policies related to interests lying outside the domestic sphere, has developed the international outlook, and inspired the disposition and the courage to deal with external problems.[29]

Economic Internationalism

In brief, then, this great economic movement has profoundly affected international politics. Economic isolation becoming impossible, political isolation is seen to be equally impossible. States cannot remain indifferent to interests that are deemed essential to their prosperity — and the free and peaceful flow of commerce from country to country is one of those essential interests. For governments to coöperate in keeping the channels of trade open to the world and the seas safe for the shipping of all flags, and in doing away with burdensome and discriminatory regulations and restrictions in commercial ports, at the frontiers, and in the undeveloped regions of the earth — all this is not to step outside the legitimate sphere of government but to serve a primary end of government.

This coöperative movement has been aptly called economic internationalism; it is well under way and has achieved substantial results. It does not seek to supersede the control of national fiscal policies by way of tariffs, or of policies like that of securing to the national merchant marine a monopoly in coastwise trade, designed to promote distinctively national interests. Rather it aims at removing trade discriminations, lessening unfair competition, and promoting, in general, freedom of communications and of transit, and equitable treatment for international commerce.[30]

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[28] By Walter Lippmann, in his book bearing that title.

[29] On imperialism generally see, among other works that might be cited: Parker Thomas Moon, *Imperialism and World Politics* (1926), and *Syllabus on International Relations* (1925), Part III; P. S. Reinsch, *World Politics* (1900); W. E. Weyl, *American World Policies* (1917), Part II; H. F. Fraser, *Foreign Trade and World Politics* (1926); J. A. Hobson, *Imperialism* (Rev. Ed., 1925); Buell, *op. cit.*, Part II. The imperialistic movement which resulted in the absorption of Africa by the European Powers may be studied in such books as Norman Dwight Harris, *Europe and Africa* (1927). The statement in the text is well illustrated by the profound influence upon the foreign policy of the United States of the territorial acquisitions resulting from the Spanish War.

Its significance for this study lies in its inevitable effect upon the growth of international administrative law and machinery, the stimulation of international law-making, and a growing emphasis upon the necessity of dealing with permanent international interests through equally permanent agencies of control — in a word, of better developed international government.

VI. International Aspects of National Policies

It should occasion the student no surprise that international government has thus far developed no complete and logically adjusted system; that, on the contrary, it has found expression in processes and machinery more or less peculiar to itself. Hitherto, at any rate, the problems of international intercourse have been largely unlike, both in kind and degree, those with which domestic government has been concerned. Of late, however, along many important lines, national governments individually, and the nations collectively, have been obliged to deal with strikingly similar interests; or, to put it in another way, have been forced in many cases to deal with precisely the same problems in their respective fields.

For example, just as it has been, and still is, one of the major functions of national governments to insure the freedom and safety of communications for persons and property within their respective borders, so it is one of the most important functions of international government to maintain the like freedom and safety of commercial transit upon the high seas and across national frontiers, subject, of course, to the necessary limitations imposed by the legitimate police and fiscal regulations of the several countries. Thus, international regulations have been adopted to prevent collisions at sea, to protect international cables, to regulate aircraft and wireless communications, to open navigable rivers to the commerce of the world and to improve and safeguard navigation thereon, to secure to inland countries free transit to tidewater and the right to use convenient ports in their foreign commerce, to open seaports to the commerce of the world, etc.[31]

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[30] One of the declared purposes of the League of Nations. See *Covenant*, Art. XXIII, paragraph (e). On economic internationalism see Buell, *op. cit.*, Ch. VI.

Again it will appear that the conservation of the public health, everywhere and always one of the most important interests of national governments, became an international problem as well, with the development of modern facilities for travel. Bitter experience demonstrated that national governments, acting single-handed, were powerless to protect their people adequately against the introduction of epidemic diseases across their frontiers and through their ports of entry. Hence the establishment, in 1907, of the International Office of Public Hygiene at Paris, and the more recent organization of the health service of the League of Nations, broadly international agencies to wage war upon disease.[32]

Moreover, the same development in transport, and the quickening pulse of business life, made obsolete the old cumbersome arrangements between nations for the transit of mail matter, and forced the nations collectively to establish an international mail service, just as the more advanced nations had each taken over the postal service as a governmental function. Hence the creation, in 1874, of the Universal Postal Union, an organization embracing in its membership every nation of any consequence in the civilized world, to provide for the safe, rapid, and economical transportation of mail matter between its members.[33]

International Administration

An interesting analogy between national and international government is afforded by recent developments in the field of administration. One of the most striking aspects of modern national government has been the rapid multiplication and the wide jurisdiction of what are known as administrative bodies — boards, bureaus, and commissions of various kinds. These agencies concern themselves with the carrying out of the details of policies fixed by general laws, details that require daily attention from officials more or less permanent in tenure and skilled in technique. Illustrations in the federal government of the United States are the Interstate Commerce Commission and the Federal Trade Commission, and in the states, Boards of Health and Public Service Commissions. These bodies have come into existence of necessity, because it is quite impossible for legislatures, or even the ordinary executive agencies, to handle the questions of routine administration that arise from day to day. So important has administration become that some writers add to the traditional three departments of government a fourth — the administrative department.[34] Indeed, this development, everywhere in evidence, has been called "government by commission."

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[31] Some of these international regulative acts will be referred to in later connections.

[32] Discussed in Chs. XIII, Sub. V and XXVI.

[33] See Ch. XIII, Sub. III.

In like manner, as will appear later,[35] the growing intimacy of international relations and the multiplication of common interests demanding constant attention have brought into existence a considerable number of administrative bodies — "little leagues of nations" they have been called — to deal with matters of international concern that cannot be handled properly by formal international gatherings or through diplomatic channels.

VII. Nationalism and Internationalism

The movement briefly sketched in the foregoing pages may be summed up in a word as internationalism. It has been one of the two dominant aspects of international politics during the past century; the other has been nationalism. Internationalism proceeds upon the community theory of the relations between states; it stresses interdependence rather than independence. It seeks to adjust international relations to fit what has been referred to as the "facts of international society." It assumes, as the inescapable lesson to be drawn from the history of politics, that social and economic unity must result in a large measure of political unity, whether in the national or the international sphere.

Paralleling the internationalist movement, and to a certain extent unfriendly to it, nationalism has tended to stress the individualistic point of view in international life. It invokes the principle of national independence to retard the movement towards national interdependence. It tends to exalt the state as a bulwark against what it fears to be the ultimate outcome of internationalism — the super-state. The modern state it deems to be the ultimate form of political organization, and questions any interstate policy that may have a tendency to undermine it. Nationalism has been manifested in various ways; the unification of national states like Germany and Italy has been its most conspicuous evidence. The imperialistic movement, while indirectly favorable to internationalism as already

[34] W. F. Willoughby, *The Government of Modern States* (1919), 231.

[35] See Ch. XIII.

suggested, has been largely prompted by nationalism — the ambition to project the national life out beyond the frontier, for commercial or strategic reasons, and thus to magnify the national "place in the sun."

Nationalism has been manifested, also, in high protective tariffs, in treaties which secure special privileges for the traders of the nations concerned, in commercial restrictions upon the use by foreign traders of ports and inland waters, in the zealous promotion of private economic interests abroad, and in a variety of other ways. Perhaps the most striking exhibition of nationalism has been the competition in armaments which has long obsessed the foremost nations of the world.

Thus the past century has witnessed a remarkable political phenomenon. Two ideals of political organization, in essence antagonistic, have held sway side by side — the individualistic or particularistic ideal of the state as a self-contained political unit, characterized by certain definite, exclusive qualities, sovereignty, independence, equality, on the one hand; and the ideal of internationalism, anti-individualistic, social, unifying, on the other. This phenomenon has sharply challenged the attention of thoughtful students of international relations. Especially was it critically examined during and after the World War, in the attempt to discover the basic causes of that catastrophe. As already noted, it has had its parallel within the sphere of the state itself, in the conflict between the antithetical principles of individualism and socialism.

It must be admitted, on the whole, that nationalism in theory, and in its extremer manifestations in practice, has been unfriendly to internationalism; the two points of view are theoretically antagonistic. Every advance made by internationalism has represented a concession made, not always grudgingly to be sure, by nationalism.

Nationalism the Basis of Internationalism

But after all, overemphasis has undoubtedly been placed upon this antagonism. Internationalism has too commonly been represented as the unrelenting enemy of nationalism, as bent upon the absorption of the state into a superstate, and nationalism, in turn, as the strong bulwark of the state against this implacable foe. As a matter of fact, this has not been the attitude of level-headed exponents of either principle.

Wise internationalists look upon the state as the indispensable foundation of international organization. The new international order, they aver, presupposes the continued existence and vigor of the old nationalistic order; and their aim is to work out a compromise between the two principles, to enlist the dynamic forces of nationalism on the side of internationalism. Just as a robust individualism is in no sense incompatible with due governmental vigor, so the spirit of nationalism is consistent with the organization of international society on a broad and helpful basis. The intensification of the nationalistic attitude has not involved the defeat of the ideal of a world order; it has changed the form of that ideal by substituting for the idea of a world state that of a community of free states in coöperation.[36]

Pains have been taken to point out in various connections the analogies between national and international government. Properly limited and qualified, such analogies serve a useful purpose; overstressed they are misleading. If urged in support of the thesis that international government need only borrow its principles and procedure from the well-governed state, and model its machinery after that of established national governments, the argument ignores the delicate and difficult adjustments necessary to adapt the one system to the other; and to do this is not to further the end sought. International government has suffered much from its overzealous friends. On the other hand, to call attention to analogies as illustrative of the fundamental identity of the great problems of government in the two spheres is to domesticate, so to speak, the less familiar concepts of international government by reference to those of common knowledge. Thus government in the international sphere is seen to involve familiar principles and problems, the approach to which may be safely charted along the courses followed by national government in its historical development.

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[36] Ramsey Muir, *Nationalism and Internationalism* (1917), 222; W. B. Pillsbury, *The Psychology of Nationality and Internationalism* (1919), 306. Among the many books on nationalism the following may be cited: Sidney Herbert, *Nationality and its Problems* (1920); C. J. H. Hayes, *Essays on Nationalism* (1926); Krehbiel, *op. cit.;* G. B. Gooch, *Nationalism* (1920); Sir R. Tagore, *Nationalism* (1917). See also James Bryce, *Essays and Addresses in War Time* (1918), Ch. VII, on "The Principle of Nationality and Its Applications"; C. de Visscher, *The Stabilization of Europe* (1924), Ch. I; David Starr Jordan, *op. cit.*, Ch. III; J. A. R. Marriott, *The European Commonwealth* (1918); A. Zimmern, *Nationality and Government* (1918); A. J. Toynbee, *Nationality and the War* (1915); Philip Marshall Brown, *International Society* (1923), Ch. I; J. W. Garner, *Political Science and Government* (1928), 123 ff.; Bernard Joseph, *Nationality: Its Nature and Problems* (1929).

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CHAPTER III

LINES OF FUTURE DEVELOPMENT

To indulge in speculation as to the future of international government is beyond the purpose of this study. It is believed, however, that international political organization has developed far enough, and that the factors involved have been disclosed clearly enough, to warrant some fairly legitimate deductions as to its future lines of evolution. That international government is now in rapid process of development is certain; and that this process will continue, even at an accelerated pace, is highly probable. Progressive national governments undergo constant readjustments; being social agencies they must serve social ends, and in a rapidly changing society government must needs be highly dynamic. Abstract theories as to what government ought or ought not to be or do cannot in the long run withstand the pressure of social development upon the structure and processes of government.

So in the international sphere. Theories of the state, or of the proper scope of international government, potent as they may be, must in the long run be adjusted to the requirements of modern life. Political philosophies may greatly influence the development of governmental systems, but inasmuch as such philosophies are largely the interpretations of contemporary politics, they must themselves change as the realities of national or international life change.

It is not too much to say that the world has entered upon a new era in international political life. The transition from the old order is evidenced, not merely by the creation of new machinery of government, such as the League of Nations and the Permanent Court of International Justice, but perhaps even more strikingly by the profound examination which the principles of international organization are undergoing throughout the civilized world. This examination, moreover, is being pressed, not alone by idealists who are free to develop their systems with no sense of political responsibility, but also by statesmen and publicists who understand international realities.

I. WEAKNESS OF PRE-WAR INTERNATIONAL GOVERNMENT

The World War impressively demonstrated the political weakness of the modern state system as it existed in 1914. Students of government, as they saw that system apparently falling into ruins under the impact of war, were forcibly reminded of an historical parallel, instructive and ominous if not exact, of an earlier state system that suffered a tragic fate. The ancient Greek City States had all the essential elements of a broad national unity, save the will to unite. In the essentials of political life they were extraordinarily homogeneous — a common language, religion, and general culture, similar economic interests, geographical propinquity, and the like. Indeed, they succeeded in working out a limited code of interstate law embracing some of the principles of modern international law, and even drew together in temporary alliances to avert common dangers.

But they failed to work out an adequate system of international relations, and that failure was fatal.[1] Each stood resolutely upon its own sovereignty and independence, refusing to heed the obvious dictates of the general welfare by granting concessions to what might be called the higher sovereignty of the group. In seeking to preserve independence in its narrow perfection they lost it utterly. During the World War, Mr. G. Lowes Dickinson wrote an essay entitled "The European Anarchy." What did he mean by the "Anarchy" of Europe? Not simply that Europe was at war, but rather that Europe had utterly failed to organize a system of government adequate to the most elementary task of civilization — that of keeping the peace. A society of states had arisen, like the Greek, closely knitted together by ties of social and economic interest, inevitably destined to live side by side as neighbors, amazingly interdependent in the most vital respects, and rapidly approaching common standards of life. And yet, notwithstanding this ample basis of political organization, the political power of the group as a whole was almost completely decentralized, parcelled out among states acknowledging no affirmative responsibility for the well-being of the states collectively. To put it another way, no machinery had been devised whereby collective responsibility for the collective welfare could be enforced. Thus the system, if it might be called such, was devoid of any authority to deal with the immediate causes of war, or to avert it when it became imminent.

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[1] Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), 13.

The World War brought the nations face to face with this tragic situation. The universal rupture of normal international relations incident to the war demonstrated the need of a more comprehensive system of international government. The lessons of the war are many; but one of the plainest of them is, that international war as waged in 1914–1918, and much more war as science and inventive genius promise to make it in the future, is incompatible with the existence of a highly organized society. Domestic violence is fatal to the happiness and progress of a people, hence its stern suppression by all enlightened states. International violence is equally fatal to the well-being of a society of closely interrelated states, hence it must be superseded by other means of settling international differences. Such, at any rate, is the irrefutable logic of four years of conflict which brought the Western World to the brink of ruin.

II. The New Machinery of International Government

Whether the machinery brought into existence at the close of the war, in an effort to end the "European Anarchy," constitutes the permanent framework of a more adequate system of international government, time alone will tell. This machinery, comprising the League of Nations, the International Labor Organization, and the Permanent Court of International Justice, must still be deemed an international experiment; its ultimate success cannot be dogmatically assumed. Again, even if it should prove to be the substantial beginning of a new world order, it would not be safe to assert that it will not suffer fundamental modifications under the test of experience. Like all political systems, its forms and functions will be moulded by evolutionary forces, the strength and tendency of which cannot now be foreseen.

It is to be noted, however, as a significant and hopeful fact too often lost sight of, that while this group of institutions represents the most definite advance the world has yet made in international government, it embodies, as a matter of fact, entirely familiar principles and agencies, as will appear in the course of the present study. James Bryce said of the Constitution of the United States that little of it was absolutely new, and much of it as old as Magna Charta.[2] So it may be said of the machinery set up under the Peace Treaties, that little of it is absolutely novel, and that much of it goes back in germ to the beginnings of the modern state system; indeed, its most fundamental features have all been tried out in recent international practice, and with substantial success.[3] The application of judicial procedure to the settlement of international disputes, the functions of the League Council as a tribunal or commission of conciliation, the conference principle embodied in the League Assembly, the administrative functions of the League Secretariat and the International Labor Office, the quasi-legislative functions of the League and the International Labor Conference — all these devices of international intercourse, while embodied in new forms, have become well recognized in international practice during the past century.

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[2] *The American Commonwealth* (Rev. Ed., 1911) I, 28.

Whatever may be the ultimate fate of the institutions brought into existence at Versailles, it cannot be doubted, at any rate, that the principle of coöperative effort in solving international problems, and of collective responsibility for the welfare of international society, which they embody, will survive, — reëmbodied, it may be, in a mechanism better adapted to the needs of the future. Nor can it be doubted that international government will be projected into fields not yet occupied, and that this movement will be supported by enlightened nations on grounds of self-interest, if not of altruism. The true line of demarcation between the legitimate sphere of the state, on the one hand, and the exercise of collective international authority, on the other, is difficult to chart; indeed, it may never be drawn with finality. It will be gradually developed by experience, in a never-ending process of readjustment. The problem is identical with that always and everywhere encountered by states in their ceaseless endeavor to establish and maintain the boundary between the freedom of the individual and the authority of government, a problem never finally solved.

III. A Broadening Realm of International Control

In several fields, however, extensions of international control may be anticipated with some confidence. The necessity of diminishing the hazards of international war, now so widely and keenly felt, will promote the development of more effective machinery for the peaceful settlement of international disputes along lines already well defined. The right of a nation to wage war at will, hitherto insisted upon as an attribute of state sovereignty, will certainly be more and more questioned; indeed, it has already been surrendered, in principle, by the signatories of the so-called Kellogg Pact. This renunciation, however, must needs be reinforced, as it doubtless will be, by the firm establishment of generally accepted alternatives for war.

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[3] M. O. Hudson, *Current International Coöperation* (1927), 30 ff.

Again, it will be the constant aim of international government to extend the general rules of international law to cover, so far as possible, the whole field of international relations. Of course, this aim will never be completely realized; even in the individual sphere there is always, under civilized governments, a " sphere of anarchy " from which government is excluded. But it is safe to say that more and more the relations between states will be brought under legal regulation. This will come about through the progressive development of international law, in at least two ways: First, by the process of codification now under way,[4] which will tend, not only to clarify existing rules by defining them more precisely, but also to bring under regulation matters now within the general field of international law but not covered by precise rules. In the second place, it is probable that certain policies now generally conceded to be within the exclusive jurisdiction of the states will gradually assume such international importance as to come under international regulation, in substantial measure at least. Among these policies may be mentioned immigration, which has already been made the subject of international agreements.[5]

The international administrative function, now exemplified by the Universal Postal Union, the International Bureau of Weights and Measures, and other like organizations, will undoubtedly develop beyond its present limits, not perhaps through the creation of new, independent, administrative bodies, but rather within the Secretariat of the League of Nations. New contacts in the everyday routine of international intercourse will necessitate new machinery for their control; air navigation and the radio are recent illustrations.

A growing sense of the vital importance of safeguarding and fostering international trade will doubtless reconcile states to broadening reaches of international control over the processes of commercial exchange, and perhaps bring into existence new agencies to that end. In spite of the efforts of nations to become economically self-sufficient,[6] the geographical distribution of the raw materials necessary to diversified industry is so unequal that no industrial nation can live prosperously unto itself alone. Indeed, with the threat of war eliminated, or substantially lessened, nations will be more and more disposed to specialize in industry. Thus economic interdependence will probably increase rather than lessen, and with this increasing interdependence there will naturally develop agencies for the collective control of the channels of international trade.

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[4] See Ch. XXII.

[5] See Pitman B. Potter, "The Expansion of International Jurisdiction," XLI *Pol. Sci. Quar.*, 546 (1926).

[6] On this point see R. L. Buell, *International Relations* (Rev. Ed., 1929), Ch. V on " Economic Nationalism."

Standardizing Influences Will Continue

Finally, without undertaking to forecast other specific ways in which international government will adjust itself to the needs of the future, it is obvious that all the forces which have hitherto tended to internationalize the world will continue to operate. The psychological basis of international relations will be strengthened by the growing intimacy of the contacts between peoples; standardization in the habits and observances of social life will go on apace; finance will continue to speak its international language; art and science will become more and more cosmopolitan. The result of all this will be a growing recognition of the fact, already fully disclosed by an attentive study of contemporary life, that the states of the world constitute, not rhetorically but literally, a society, and that this society, like each of its constituent societies, must become better organized politically if it is to attain its highest development.

The problems of international, as of national, government are numberless — problems of readjustment to rapidly changing conditions; the more important of them will be dealt with in later discussions. Three outstanding illustrations may be mentioned here, each involving grave difficulties. It will appear that certain orthodox theories of the state, sovereignty and equality in particular, must be substantially modified in practice before the machinery of international organization can work satisfactorily.[7]

As already indicated, another important task ahead is that of amplifying the body of international law so that it will embrace a wider range of international interests; and third, the problem of international war involves the effective establishment of universally recognized substitutes for force in the settlement of international disputes. Perhaps the most fundamental and subtle problem of all, because it is a prerequisite to all progress in international government, is that of cultivating a more alert and intelligent public opinion as to international matters, and more effective agencies for its expression. This matter deserves more than passing mention.[8]

[7] See Ch. VI on State Sovereignty and Ch. VII on State Equality.

[8] It is further discussed in Ch. XII, Sub. IV.

IV. Popular Control of Foreign Policy

From the standpoint of each state, international government involves questions which lie within the range of what is termed its foreign policy. More specifically, how far each state shall go in the direction of international coöperation, and what measures to this end shall be approved and what rejected, are domestic questions which collectively embrace an important part of the foreign policy of the state. It is a signal evidence of the growing importance of international relations in the modern world, that the determination of foreign policy has come to be regarded as of the very first importance.

Before the advent of democracy, monarchs were unembarrassed by effective constitutional limitations upon their powers in respect to the foreign relations of their countries. Aided by their diplomatic officials, who were deemed their personal representatives, they were pretty much a law unto themselves in dealing with international questions. It is reminiscent of those days that the exigencies of modern government have left foreign policy largely in the hands of the executive, in that it is tentatively formulated by executive action, and when approved by the appropriate agencies — indeed, in most governments many very important executive acts in this field require no formal approval — it is carried out in large part by the executive.

But the rise of popular government introduced a new factor into the situation. If self-government is to be completely such it must control all the policies of the state, both foreign and domestic. Unless democracy is to break down at the frontier, it must somehow bring public opinion to bear effectively upon issues of foreign as well as of domestic policy. " A part of politics is domestic and a part international, since there is a distinction between the state as a separate unit and the state as an element in the world of states, governments or peoples." [9] Thus, to cover the whole field of politics the citizen must concern himself, not only with domestic issues, but with the relations between his own political group and other similar groups — relations of great and increasing intimacy and importance. But as stated elsewhere more fully,[10] it is exceedingly difficult for the citizen to project his interest out into this wider field, and to reach reasoned conclusions on the issues there presented, and for two main reasons: First, his failure to appreciate their importance,

[9] C. Delisle Burns, *International Politics* (1920), 5.

[10] Ch. XII, Sub. IV.

and second, his lack of information upon which to base opinions. As to the first obstacle, the business of getting a living ordinarily absorbs his energies without impressing him with a sense of any necessary or natural relation between his immediate personal interests and the external concerns of the group to which he belongs. To him life is a tissue of individual relationships; international relationships, so far as he is conscious of them at all, he is content to leave to the statesmen. He realizes the vital importance to him of foreign policy only when it involves his country in crises, and then he unquestioningly follows the lead of his government.

Every long-established nation has certain time-honored maxims which, to the popular mind, are adequate and final expressions of its foreign policy, to be upheld at all cost. Having become traditional, the task of reassessing them, in the light of the new facts of international life, seems both unnecessary and unpatriotic. Something may be said for this conservative attitude. Consistency in foreign policy is desirable, in the main, because it conduces to friendly relations between nations that each shall understand the basic policies of the others, and so be better able to shape its own intelligently. But, on the other hand, in times like these, when the fundamental factors in foreign policy change so rapidly that nations really have no alternative to the recognition of the new conditions of international life, it is highly desirable that readjustments be inspired and backed up by well-informed and internationally-minded electorates.

Need of Better Informed Electorates

The other obstacle to effective popular control of foreign policy is allied to that just considered. Indifference begets ignorance, whereas public opinion presupposes knowledge. Sound personal opinion may have two bases: Either the first-hand knowledge of the individual, or reliance upon the expressed opinions of those who have the requisite knowledge.[11] The former is confessedly difficult to acquire in the field of international relations, depending as it does upon wide study and observation along unfamiliar lines. As to opinion based upon the leadership of those who have the time and training to build up well-reasoned views, it must be confessed that heretofore, in general, statesmen themselves have not been disposed to make sufficiently dispassionate study of the realities of the new world of states. Traditional beliefs and attitudes, especially those thought to chime in with the dictates of patriotism, have too often usurped the place of conclusions based upon a courageous reassessment of the bases of foreign policy.

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[11] A. Lawrence Lowell, *Public Opinion and Popular Government* (New Ed., 1926), Ch. II.

Thus the future of international government depends largely upon better-informed electorates. If democracy is to be such in the fullest sense, it must take command of all the processes of government, and not content itself with local control alone. Failing to do this, it cannot altogether blame its statesmen when foreign policy results in catastrophe; for in the long run wise leadership is impossible without intelligent popular support.

Once democratic peoples cease to think of international relations as something remote, inscrutable, and of no immediate concern to them, and come to realize that, in a world of intimately related states, the welfare of each is bound up with that of all, not sentimentally but from the most practical point of view, the main obstacle to the progress of international government will have been overcome.

V. Science and International Relations

Thoughtful students of international politics are beginning to grasp the significant fact that modern progress in science and invention, the material conquest of the world, has outstripped the present capacity of mankind to control wisely and justly the vast forces thus set in motion. Science has armed man with weapons which will destroy him if he does not dominate them.

> Stated in more accurate terms the question that confronts our generation is, whether or not our shifting physical environment has outrun our capacity for adaptation. Is human society being gorged with innovations too great for its powers of assimilation? Are there limits to our ability to absorb alteration and change? If the pace were not so swift, if history were moving with more deliberate steps, biology would have a ready answer to these questions. But we are living in an age in which overwhelming transformations are taking place overnight. It is not the fact of change, it is the rate of change that constitutes the danger.[12]

" Never before," said the writer quoted above in a recent address, " has the advance been so swift. Never before has so complete a metamorphosis been packed into a single century. We have rubbed the magic lamp of technical knowledge, and at our bidding science has given us a new world." But social science, the science of human relations, has not kept pace with the progress of natural science. This is preëminently true in the international sphere. International politics is still thought of too exclusively in terms of the state, whereas, in a thousand directions, modern life has overflowed national boundaries. Highly civilized men still live in politically isolated groups, set off, one from another, by frontiers that suggest hostility; whereas in fact the world has attained a solidarity, due to the almost inconceivable development of communications and transit, never dreamed of when the present state system came into existence. Sovereignty is still widely held to be an absolute concept, admitting no impairment or diminution if independence is to be preserved; whereas sovereignty, in the old orthodox sense, is rapidly going by the board, and must suffer still more fundamental modifications if international life on its political side is to adapt itself to the new conditions.[13]

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[12] Raymond B. Fosdick, *The Old Savage in the New Civilization* (1928), 34.

Referring to the fact that the progress of science in the past century has reduced the world to the unity of interdependence, a recent writer adds:

> Yet our interdependence has not procured a unified outlook. Racial hatred, national suspicion, the war of class and class, all these remain to emphasize to us the error of optimism. Confidence, in fact, is the more dangerous because the weapons that science has placed at the service of destruction are now so powerful that their utilization is incompatible with civilized life.[14]

In his recent book, *New Aspects of Politics,* Professor Charles E. Merriam admirably sums up this point of view: [15]

> Have we not reached the time when it is necessary to adjust and adapt more intelligently, to apply the categories of science to the vastly important forces of social and political control? We complacently assume that all will always be well, but at any time out of depths of ignorance and hatred may emerge world-war, anarchy, industrial and political revolution, recurring discontent and distress. What advantage shall we reap if science conquers the whole world except the world's government, and then turns its titanic forces over to a government of ignorance and prejudice, with laboratory science in the hands of jungle governors?

[13] See R. B. Fosdick, "Public Welfare in Relation to International Problems," 105 *Annals Am. Acad.,* 17 (1923); Roth Williams, *The League of Nations Today* (1923), 19 ff.; C. Delisle Burns, "International Problems and Political Philosophy," 126 *Contemporary Review,* 479 (1924).

[14] Harold J. Laski, "Lenin and Mussolini," 2 *Foreign Affairs,* 43 (1923).

[15] Preface, p. xi.

This readjustment is one of the most urgent tasks of our time, and one which if not successfully carried through may result in the wreck of modern civilization.

New Educational Agencies

It is a hopeful sign of the times that the challenge of this vital problem is being more and more widely accepted. Not only is there a growing appreciation of the importance of educational facilities for the general study of government and politics, but an increasing number of specialized courses in collegiate institutions afford the student opportunity to enter the broad field of international relations. Schools of diplomacy are dealing with the technique of international political intercourse,[16] while group conferences like the Williamstown Institute of Politics are studying intensively the background and the problems of international politics.[17] This educational movement is effectively aided by the Carnegie Endowment for International Peace, the World Peace Foundation, and other like agencies, entirely divorced from the national point of view and the narrowly propagandist spirit, and devoted to the task of making widely available the best thought of the world on international questions.

The difficulties of the problem of popular education in the international field are not to be minimized, but the problem itself cannot be ignored. While it may assume different aspects in view of differing national conditions and interests, in essence it is everywhere the same; it knows no frontiers. It is no less than the cultivation of what has aptly been termed the international mind.[18]

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[16] Like that at Georgetown University and the proposed Walter Hines Page School of International Relations at Johns Hopkins, not to mention the diversified political science curricula of the leading universities. See W. B. Carpenter, "The Equipment of American Students for Foreign Service," 122 *Annals Am. Acad.*, 124 (1925).

[17] Other institutions of this character are: The Institute of International Education, the Foreign Policy Association, and the Council on Foreign Relations, all in New York; the Institute of Intellectual Coöperation in Paris, functioning under the auspices of the League of Nations; the Institute of Pacific Relations, devoted to discussion of the problems of the Pacific; The Reference Service on International Affairs of the American Library in Paris; the Post-graduate Institute of International Studies at Geneva, Switzerland, and the Geneva School of International Studies.

[18] Nicholas Murray Butler, *The International Mind* (1913); Alfred Zimmern, "The Development of the International Mind." Address before the Geneva Institute of International Relations in 1926, published in the Institute's *Problems of Peace;* J. A. Hobson, *Towards International Government* (1915), Ch. XI. On the need of popular education in politics see James T. Shotwell, *Intelligence and Politics* (1921).

As a background for the study of international government some consideration must be given to the foundations upon which it rests, namely, the state system which has brought it into existence and now conditions its development, and the body of legal rules regulating the intercourse of the members of the international society. The former subject embraces an analysis of the essential characteristics of the state as an international person, a brief review of the historical development of the national state, and a description of the society of states as it now exists. The latter topic, the legal basis of international government, leads into a discussion of the origin and nature of international law, and a summary outline of the content of the existing body of international law. The significant international legislative movement now under way will be discussed in Part VIII.

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Part II

BASES OF INTERNATIONAL GOVERNMENT

CHAPTER IV

NATURE OF THE MODERN STATE

International government involves political relations between the states which make up what is commonly referred to as the community, or family, or society of nations. Thus the state constitutes the most fundamental factor in the organization and processes of international government, and a review of its characteristics, and of the state system as a whole, becomes necessary to an understanding of the governmental institutions presently to be discussed — their structure, the principles they embody, and the problems with which they deal. This subject easily leads into the realm of theory, and beyond the scope of this study. Leaving technicalities to the student of international law or of jurisprudence, this chapter will deal briefly with those aspects of states which more directly affect their political relations one with another.

I. Legal Characteristics of the State

In the eye of international law, as in common speech, the state is personified. It is more than a mere group of people governmentally organized; to resort to a technical phrase, it is in generally accepted theory a juristic entity or person. It has strictly legal relations with other states, and is endowed with many of the legal attributes of the natural person. For example, it may enter into contracts; may sue and be sued in courts of law; [1] may commit wrongs by way of trespassing upon the territory of other states, or taking or destroying their property, and become liable to a penalty therefor by way of the exaction of money damages, measures of reprisal, or even war. Indeed the state, in its essential legal characteristics, is closely analogous to the familiar corporation under municipal law.

Because this legal concept of the state gives rise to fairly definite rights and responsibilities in international relations, it is of far more than technical importance. In this connection it is enough to point out that, for one thing, it implies that states are fully competent to develop their relations into a system definitely organized and authoritatively controlled, in which each shall assume binding obligations and enjoy corresponding rights. Thus in theory the state is potentially an efficient, completely endowed unit of international government.

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[1] It is a familiar rule of international law, however, that a sovereign state cannot be sued without its consent.

Necessary Elements of Statehood

Because the state is conceived of as a juristic person capable of entering into important legal relationships, it has been necessary to define somewhat precisely the factors which must coexist to enable a group of people to assume the status of statehood and thus become international persons. In brief, such a group must be permanently organized for political purposes, must occupy a definite territory, and must maintain a common government capable of commanding its habitual obedience.[2]

These elements of statehood need not be explained in detail. Permanency of abode and of organization are obviously essential; neither a state-at-large, so to speak, nor one in chronic political disorganization, could enter into continuous relations with other states. This does not mean, of course, that mere territorial gains or losses affect the international status of a state, nor that its government must at all times be proof against revolutionary changes, but merely that international governmental relations, in general, can subsist only between states ordinarily capable of making and enforcing laws within definite territorial limits.

Again, the group must be organized for political purposes if it is to enter into political association with other states, for otherwise it would have too little in common with such states to afford a basis for coöperation. This is not saying, of course, that common nonpolitical interests do not contribute vastly to political intercourse, but only that such intercourse must necessarily be maintained through political agencies. Indeed, it should be emphasized that likeness in the type of political organization maintained by the several states contributes materially to the facility of international intercourse.

In the third place, it may be noted that the establishment, by a group of people, of a stable government indicates a degree of culture and a habit of subordination to law and authority which goes far to qualify them for membership in the community of states. There can be no hard and fast measure of the degree of civilization necessary to entitle a state to international recognition as such. But however difficult of application may be the cultural test of fitness for admission to the family of nations, it necessarily arises as a practical question when politically dependent peoples aspire to full statehood by appealing to the so-called right of self-determination. The former idea that only Christian states could be full-fledged members of international society has been definitely discarded.[3]

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[2] For various definitions of the state see J. W. Garner, *Political Science and Government* (1928), 51 ff.

Finally, the group must be numerous enough to afford a reasonable guarantee of the stability of its organization, and to hold out some promise of political independence. The First Assembly of the League of Nations struggled with this question in dealing with the applications for League membership of the Principalities of Lichtenstein and Monaco, and San Marino. None of these small states was admitted, Lichtenstein having been definitely refused membership, although probably all of them were " fully self-governing states " within the meaning of the clause of Article I of the Covenant of the League prescribing the qualifications for membership therein.[4]

Groups not Full-fledged States

So much for the attributes of states as full-fledged participants in international affairs. It should be noted that international government is more or less concerned with groups not accorded recognition as states in the full international sense because restricted in the control of their external relations for one reason or another, though self-governing internally. For example, certain states have been neutralized by international agreement, and thus denied the full exercise of external sovereignty; [5] other political groups have fallen under the control, in varying degrees, of other states in respect to their foreign relations.[6]

Sometimes such groups become emancipated from external control or involuntary limitations upon their competency in foreign affairs, and take their places in the category of full-fledged states. Thus Belgium, formerly neutralized, regained her complete sovereignty under the Versailles treaty, as already noted. Syria, Palestine, and Iraq, now under League mandate, are to be so administered under the trusteeship of the League as ultimately to become full-fledged states.[7] So also the so-called British self-governing dominions, formerly subject largely to the control of the British government in external matters, are now on a basis of theoretical equality with the Mother Country, as members of what the Imperial Conference of 1926 termed the British Commonwealth of Nations.[8]

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[3] It went by the board when Turkey was admitted in 1856, and Japan accorded formal recognition in the last decade of the century.

[4] See article by Manley O. Hudson on " Membership in the League of Nations," 18 *A. J.*, 436 (1924).

[5] Switzerland is the only existing permanently neutralized state, and her status as such is modified somewhat, in principle, by her membership in the League of Nations. See M. W. Graham, " Neutralization as a Movement in International Law," 21 *A. J.*, 79 (1927). Belgium and Luxemburg, formerly neutralized, were relieved of that status as the result of the World War. See George Grafton Wilson, *International Law* (2nd Ed., 1927), 26, and on neutralization see Ch. V.

[6] Illustrations of this class of protected or dependent states are numerous, especially in Africa. See Wilson, *op. cit.*, 29.

Still lower in the political scale are numerous groups dependent both internally and externally — in no sense states but rather " possessions " of other states. Such are the colonies of the imperialistic powers in various parts of the world. These groups below the status of sovereign states are of great importance to international government, as will appear in later connections; their chief significance, however, lies in the international problems they raise rather than in their contributions to the solution of such problems. Of special interest are those dependent groups which, having some or all of the formal requisites of statehood, demand full recognition as states.[9]

II. Fundamental Attributes of the State

The foregoing rather abstract conception of the state as a legal personality has certain implications of very great practical importance to international government and politics. In the first place, just as national law recognizes the individual right of self-defense, so international law recognizes the analogous principle of state self-preservation, which justifies states in taking measures deemed necessary for their protection. This so-called right, and the qualifications upon its exercise, were well stated in the first article of the Declaration of the Rights and Duties of Nations adopted by the American Institute of International Law in 1916:

> Every nation has the right to exist, and to protect and conserve its existence; but this right neither implies the right nor justifies the act of

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[7] See Ch. XXIII on the Mandates System.

[8] See report of the Inter-Imperial Relations Committee of this Conference, in *Int. Con.* No. 228 (1927); also in *Current History* for January, 1927, 564.

[9] Their status involves the principle of self-determination discussed in Ch. V, Sub. IV.

the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.[10]

The obvious qualification upon the enjoyment of this right of existence, namely, that it must be consistent with the like right of other states, relates, it should be observed, not merely to distinct acts of aggression, but theoretically includes as well the adoption of unnecessarily provocative measures, such as increases in land or naval forces beyond the reasonable requirements for self-defense, thus prompting neighbor states to fear aggressive designs. The admitted right of national self-defense raises grave international problems; two may be mentioned: First, it constitutes the chief obstacle to the reduction of national armaments. As later pointed out,[11] the movement sponsored by the League of Nations at once encountered the problem of national security; that is, how to afford nations limiting their armaments a measure of security equivalent to that which they were sacrificing, or thought they were sacrificing, by such limitation. This difficulty, in turn, raised the question of sanctions to enforce any collective measures of protection that might be agreed upon as against an aggressor nation; and, finally, any effective system of sanctions, it was seen, must include some kind of tests or procedure for determining which of two nations resorting to force is guilty of aggression and which acting in legitimate self-defense. Thus far no practical solution of these problems has been found.

Again, under peace treaties like the Pact of Paris and the Locarno Pact, the obligation to resort to peaceful means of settlement is always qualified, expressly or by implication, by the right of self-defense; and here, again, no tests of aggression are prescribed, a weakness which undeniably opens the door to evasions of such peace agreements.[12]

The Independence of States

Another general principle of state life is that of sovereignty — both internal sovereignty, or autonomy, and external sovereignty, or independence. Autonomy is but another name for self-government, embracing all the familiar powers exercised by sovereign states in the regulation of their internal affairs. International government is not directly concerned with autonomy so long as the state keeps within its rights, and performs its duties, as a member of international society. For example, the autonomous state has the right to enter into treaties with other states, but its treaties must not violate the rules of international law to the prejudice of third states. Again, its right to enact laws by constitutional procedure is unlimited, save that its legislation must conform to the law of nations, and must be such as to enable it to meet the requirements of international law in its intercourse with other states. Thus international law and the treaty obligations of nations constitute practical limitations upon the absolute internal sovereignty of nations, as will presently appear.

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[10] For the full text of the Declaration see article by Elihu Root as President of the American Society of International Law, 10 *A. J.*, 211 (1916).

[11] See Ch. XXXI.

[12] See Ch. XXX.

Sovereignty in its external aspect, or independence, is so important an attribute of the state and so closely related to international political organization as to merit special discussion.[13] It was well defined, and the correlative obligation of each nation to respect the independence of every other clearly stated, in the Declaration of the American Institute above referred to:

> Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

Equality — Diplomatic Intercourse — Jurisdiction

Equality before the law is a third essential characteristic of sovereign states. It logically flows from sovereignty, the theory being that inasmuch as all states have the same capacity for legal rights, and the same right of protection under international law, they are legally equal. Equality is a much discussed attribute of the modern state, and apart from the issue raised as to the validity of the theory of state equality, its practical importance as a factor in the organization and practice of international government is such as to justify extended discussion of the principle.[14]

Other so-called rights of the state are those of diplomatic intercourse and of jurisdiction. The former may not be a right, strictly speaking, but inasmuch as without diplomatic agents, or representatives, however designated, performing the functions now entrusted to the diplomatic service, governmental intercourse between nations would be impossible, any state that declined to send and receive them would automatically place itself outside the family of nations. In modern practice the severance of diplomatic relations between nations, while not in itself a prelude to war, often evidences the existence of relations between the nations concerned so abnormal as to indicate the probability of war.[15]

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[13] In Ch. VI.

[14] In Ch. VII.

By the state's right of jurisdiction is meant its right to exercise its authority over all persons and property within its territorial limits.[16] This right presupposes that a definite portion of the earth's surface, both land and water, is subject to the sovereignty of each state.[17] Substantially the entire land surface of the earth is thus parcelled out among existing states, each of which is sharply separated from its neighbors by frontiers marking the limits of its territorial jurisdiction. The land frontiers of states are ordinarily fixed by treaty; those running in or along bodies of water either by treaty or by the rules of the customary law of nations.[18] The jurisdictional rights of states are fairly well defined by international law.

The frontier as the jurisdictional limit of the state, marking as it does the point at which the sovereignty of one state ceases and that of another begins, assumes great importance in the intercourse of nations. It is a point of international friction. The strategic frontier, that is, the frontier most effectively defended, has figured largely in diplomacy. It is here that the latent hostility of states is often manifested by military defenses, and here that the struggle to preserve the territorial integrity of the state is apt to be most sanguinary. One might almost say that the fundamental purpose of international government is to temper the hostile implications of the frontier.[19]

III. OBLIGATIONS OF THE STATE

Rights imply duties and obligations. The right of one state presupposes a corresponding duty of respect on the part of other states. This principle was admirably expressed in the Declaration of the Rights and Duties of Nations of the American Institute of International Law, cited above, as follows:

> Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

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[15] See T. J. Lawrence, *The Principles of International Law* (7th Ed., 1923), 276–277.

[16] With certain exceptions established by international usage — for example, the diplomatic representatives of foreign states residing at its capital.

[17] And now the air as well.

[18] These rules definitely locate the boundaries of states separated by rivers, lakes, or other bodies of water.

[19] See C. B. Fawcett, *Frontiers: A Study in Political Geography* (1918).

It has been said with considerable truth that there has been a tendency on the part of states to stress their rights rather than their duties[20] — a tendency of evil influence in international relations. Human nature being what it is, it may be too much to expect states to be as zealous in meeting their obligations as they are in enforcing their rights; but international intercourse will never be on a sound basis until rights and duties are deemed to be strictly correlative terms in international practice.

International law recognizes this principle, in that it holds states legally responsible for their delinquencies. This responsibility may arise directly, through the official conduct of those acting under the authority of the state; or indirectly, as when, through the acts of its nationals, or of aliens residing within its territory, injury is done to another state or its nationals. The principle of state responsibility for injuries to aliens gives rise to important and oftentimes delicate questions in the intercourse of states; they cannot be discussed here beyond a statement of the general rule that a state is bound to extend to foreigners the same protection, and the same kind and degree of redress for wrongs suffered, that it accords its own nationals. For its failure to do this it must afford due satisfaction, by way of apology or indemnity, to the state whose nationals have suffered. An alien is held to submit himself to the laws of the country he enters. If he is not discriminated against, as compared with nationals of the country, he has no right to look to its government for damages for injuries suffered; provided, however, the laws of the country measure up to the standards of justice as administered by civilized countries. States do not, of course, guarantee the safety of aliens or the immunity of their property from damage; but they are obliged to set up governmental machinery that will normally protect the rights of aliens.

Before redress is sought through diplomatic action, the injured alien should generally have recourse to the appropriate national courts, resorting to diplomatic complaint only when there is an evident perversion or denial of justice on the part of the delinquent state, or when the subject-matter of the complaint constitutes a violation of treaty rights or of international law.[21]

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[20] A. S. Hershey, *Essentials of International Public Law and Organization* (Rev. Ed., 1927), 251.

[21] On this general subject see C. G. Fenwick, *International Law* (1924), Ch. XXIII; Clyde Eagleton, "Denial of Justice in International Law," 22 *A. J.*, 538 (1928); Clyde Eagleton, *The Responsibility of States in International Law* (1928).

IV. STATE AND NATION DISTINGUISHED

The terms " state " and " nation " are quite commonly used interchangeably in designating the parties to international government, but strictly speaking they are not synonymous. In point of derivation " nation " has an ethnic or racial significance, while " state " characterizes a political status based upon certain factors already described. A nation, in this technical sense, may not be a state because lacking political organization; on the other hand a state may in the like sense be multi-national — that is, made up of several national groups which, for historical or other reasons, have become united politically. Thus Switzerland is made up of three " nations," French, Germans, and Italians; and Jugo-Slavia of three, Slovenes, Serbs, and Croats. As a matter of fact, few, if any, modern states are absolutely uni-national. So a " nation " may be divided among several states. France and much of Belgium are embraced within the French nation, and Germany and a considerable part of Austria within the German nation.[22]

This rather fine distinction need not be dwelt upon, for usage practically ignores it, and such designations as the " Law of Nations " and the " League of Nations " quite justify usage. While " state " may be more technically correct, in one respect " nation " is more aptly descriptive. It calls attention to the most powerful group incentive to political organization — community of race and language — and thus goes far to account for the very existence of the state.[23]

Having regard to the groups to which these two terms strictly apply — those politically organized as states, and those having pronounced ethnic and cultural homogeneity but lacking independent political organization — the distinction has considerable practical significance because it lies at the bottom of a difficult international problem. Naturally enough, ethnic groups often aspire to statehood; thwarted in this ambition they become elements of international discord and sometimes of danger. Such situations involve the principle of self-determination.[24]

It may be remarked here that the tendency of recent years, sound in principle but involving great practical difficulties, has been towards the organization of states on the national basis, that is, making the territorial limits of the state coterminous with those of the nation. Thus in a measure group aspirations to statehood have been realized; and at the same time some progress has been made towards the solution of another international problem related to that of non-state groups, the problem of ethnic minorities, considered in another connection.

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[22] On this general subject see Garner, *op. cit.*, 109 ff.

[23] For an account of this and other elements of nationality see Garner, *op. cit.*, 116 ff.

[24] On self-determination see Ch. V, Sub. IV; and on ethnic minorities, Ch. XXIV.

V. State Government and International Government

Again, a distinction is to be made between state and government — obvious enough, indeed, but not always observed. The state is a politically organized group; government is the agency whereby the state formulates and expresses its will. Thus government is necessary to the self-expression of the state, but it is not the state itself. Under an autocratic régime it would be natural to identify the monarch, that is, the embodiment of the government, with the state, but even then the distinction would be clear. The death of the monarch would not end the state. Governments may come and go; the life of the state is continuous, surviving all changes of government.

The action of the rightful government of a state must be taken to be that of the state itself. It is a commonplace of political discussion to speak of France as saying this, or of Great Britain as doing that, meaning, of course, that some competent spokesman of the French government has declared thus and so, or that the appropriate governmental authority in Great Britain has taken this or that action. So far does the theory go that states are represented solely and validly by their governments, that international law holds a state to obligations assumed by one government against the attempt of a subsequent government, even though coming into power through successful revolution, to repudiate them.[25]

International Relations Maintained Through Governments

In their external relations as well as in their internal administration, states act through their governments alone. There is no way whereby states may enter into international relations save through their respective governments. Individuals or groups in one state may come in contact with individuals or groups in another state, even by way of seeking to influence political action; but such contact would be private, or non-political, in the strict sense. Ordinarily international government does not concern itself with the form of political organization which a state may assume; that is a matter of purely domestic policy, involving questions of constitutional rather than of international law. All that the law of nations requires of a state is that it shall maintain some form of government having authority to act for it in its international relations; otherwise it would be powerless to maintain such relations — either to assert its rights or to meet its obligations as a member of international society.

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[25] Thus the repudiation by the Russian Soviet government of debts contracted by the Czarist régime and later by the Kerensky provisional government, was generally condemned as being in violation of an established principle of international law. On the distinction between state and government see W. W. Willoughby, *The Fundamental Concepts of Public Law* (1924), Ch. V.

But under special circumstances the internal government of a state becomes a matter of international concern. When a state fails to meet the fundamental requirements of civilized society in the protection of life and property within its borders, international law will in clear cases justify other states in taking note of the fact, and in interposing their influence, and their authority if need be, to correct intolerable conditions. Such interpositions, when carried to the point of forcible interference, are in the exercise of what is called the right of intervention, which is discussed later.[26] It may be noted in passing that, with the growing intimacy of contacts between nations, this matter of compliance by a state with the fundamental duty of maintaining a government able to protect life and property is becoming one of increasing concern to international government from two points of view: First, the governments of the advanced nations, under the spur of a better informed and more alert public opinion, are less disposed than formerly to look with indifference upon conditions anywhere within the community of nations which shock the moral sense, or evidence an obvious break-down in the performance of the fundamental duties of government.

Protection of Citizens Abroad

Again, it is recognized as one of the rights and duties of a government to extend a certain measure of protection to its citizens in foreign countries, even by a resort to force, if need be. Happily the need of going to the extreme of forcible intervention is rare; it may arise, however, when a government lacks the power, or the will, to protect the lives or the property of aliens.[27] Obviously the extent to which governments will go, or ought to go, in protecting their citizens abroad, depends upon the circumstances of each particular case; the general right and duty are undoubted.[28] Especially important has this matter become latterly, in view of the enormous extent to which private business seeks foreign opportunities, and private capital foreign investment.[29]

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[26] Ch. VI, Sub. IV.

[27] The recent use of military and naval force in Nicaragua by the American

It follows from the distinction between state and government that a state does not go out of existence when its government ceases to function normally; however, in that event it may have no organs enabling it to participate in international government. Such conditions are ordinarily temporary; but in theory they might continue over a long period of time without loss by the state concerned of its statehood from the domestic standpoint. As a practical matter, however, the ability to maintain international intercourse is so indispensable to the modern state as to constitute one of the necessary attributes of statehood.[30]

VI. Recognition of Governments and States

Sometimes it happens that a nation's capacity to maintain political relations with other nations is partially in suspense because its *de facto* or actual government is not recognized by other governments as legitimately entitled to represent the state; or because the policies of its existing government run so counter to the established practices of nations as to discredit it from the standpoint of other governments. Such is the case at present (1930) with respect to the relations between Soviet Russia and the United States, the latter having thus far refused to have political relations with the Soviet government, the main grounds of refusal being that the Soviet régime flatly re-

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government was officially justified, in large part at least, on the ground that it was necessary to protect American citizens there against domestic violence.

[28] Governmental action is taken through the ordinary diplomatic channels, in the first instance, and usually results in a satisfactory adjustment of the matter in controversy. See E. M. Borchard, *Diplomatic Protection of Citizens Abroad* (1915).

[29] The importance and delicacy of the situations presented in the matter of foreign investments has been well illustrated by the recent relations between the United States and Mexico.

[30] It is pointed out, for example, that the international economic and diplomatic boycott provided for under Art. XVI of the Covenant of the League of Nations against a covenant-breaking member of the League would, if made effective, paralyze the state at which it was aimed. See Ch. XXX, Sub. II.

pudiated all preëxisting foreign loans, including one made by the American government after the first Russian revolution; also that it was the avowed policy of the Soviet government to foment a world revolution.[31]

Other states accorded recognition. Great Britain did so at first, but later suspended diplomatic intercourse because of alleged violations by Russia of diplomatic propriety in making the Russian embassy in London headquarters for the spread of Soviet propaganda. Still later, diplomatic relations between the two governments were resumed. The policy of the United States with respect to the recognition of the Huerta government in Mexico, in the first Wilson administration, is an earlier case in point. Huerta having come into power by murder and violence, President Wilson refused to recognize his régime.[32]

It has appeared that a state may exist in fact, from the internal, domestic point of view, and yet not enjoy the full status of statehood internationally. In one sense international society is a sort of close corporation, exercising the right to decide for itself whether or not a group internally organized as a state shall be adopted into the family of nations. The act whereby it accords full international status is termed recognition.

Recognition implies the right to determine whether or not a non-member state has the qualifications entitling it to membership; and this determination hinges primarily upon the question whether the prospective member gives promise, if admitted, of being able to assume the duties and responsibilities of membership. Recognition is accorded either by the states acting severally, or by collective action; [33] it is a political act performed by that department of government charged with the conduct of foreign affairs.[34] It may be a formal official act, evidenced by a proclamation or other state document, or implied from some act, as the negotiation of a treaty, or the reception of a diplomatic agent, which unequivocably presupposes full international status.[35]

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[31] See statement by Secretary of State Hughes, 17 *A. J.*, 296 (1923). For a presentation of the case for and against recognition by the United States see XXXII *Current History*, 1065 ff. (September, 1930.)

[32] For a discussion of this policy in the light of earlier precedents see John Bassett Moore, *Principles of American Diplomacy* (1918), 213 ff. See also article by E. D. Dickinson on " Recent Recognition Cases," 19 *A. J.*, 263 (1925); also *Proc. Am. Soc. Int. Law* (1924), 84 ff.

[33] Many of the new states which came into existence after the World War were recognized by collective act.

[34] In the United States it is a function of the President, conferred upon him by the constitutional provision empowering him to " receive ambassadors and other public ministers," *The Constitution,* Art. II, Sec. 3.

VII. International Government Based upon the State

Different theories have been advanced as to the origin and nature of the state, the location of sovereignty within it, and the philosophical justification of the exercise of its governmental authority, but such speculations are not pertinent to this study.[36] Enough for international government that the state exists as an established political institution. A more relevant question is as to the line of development likely to be followed by the present system of national states. Is it the ultimate type of international political organization, as some maintain? Or will it gradually yield to influences which may at length transform it into a world state, either of a cosmopolitan type characterized by the universal weakening of political ties, or of an imperial type established and maintained by a dominant political power? In either of these contingencies — remote, to be sure — the present society of states would disappear, international law would be transformed into constitutional law, and international politics into domestic politics.

This point need not be pursued; international government assumes, as indeed it must, the continued existence of the national state. It is the embodiment of group authority — the political form assumed by organized group life. Whatever its weaknesses, the state in fact " regulates the outstanding external relationships of men in society," and its great achievement has been a domestic system of law and order, without which international government would be impossible.[37]

From the juristic or abstract legal point of view the modern state is fully equipped to enter into international relations, its capacity to do so being theoretically unlimited. True, this power may be hampered for the moment by the form of government, or the distribution of governmental authority, which it may have established;

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[35] Recognition of new states is to be clearly distinguished from recognition of new governments. The former brings a new state into the international community; the latter is merely the act of determining that the *de facto* government of an existing state should be accorded the status of a *de jure* government.

[36] They are fully discussed in W. W. Willoughby, *The Nature of the State;* and more briefly in the standard texts in Political Science. See also R. M. MacIver, *The Modern State* (1926), Ch. XIV, for discussion of the evolution of modern theories of the state.

[37] MacIver, *op. cit.,* 4–5.

but of these constitutional impediments it is absolute master. Its government, once armed with the requisite power, is admirably suited to the ends of international government; it has but to adapt its machinery and methods, its domestic technique, so to speak, to a broader but closely related field.

VIII. MORAL QUALITY OF THE STATE

Comment in passing should be made on one characteristic of the state — its moral quality. In theory the state is endowed with a moral as well as a legal personality — a capacity for ethical discrimination in the choice and adaptation of means to ends. Nor is this a purely theoretical attribute of the state, for it would not be difficult to cite examples of national action actuated by highly altruistic motives. Unfortunately, however, national policies are not ordinarily dictated by lofty moral considerations, such as compassion for the afflicted, or righteous indignation over the wrongs of oppressed peoples. Such considerations may greatly influence, but do not commonly control, national action. Motives of self-interest, constant and dominating enough as factors determinative of individual conduct, are quite as controlling in the intercourse of states.

For this there are at least two reasons, or rather one reason with two aspects: First, public opinion as regards foreign policy is not instructed or keen enough to enable a people to reach sound moral judgments except on clear issues. Abstract considerations of right and justice, unsupported by moral convictions based upon understanding, are apt to be outweighed by the more clearly perceived and immediate advantages or disadvantages of this or that course of action. The individual struggles with hopelessly mixed motives in shaping his conduct; that composite individual, the people, is still less capable of distinguishing between self-interest, real or apparent, and the larger good of the society of peoples.

It is not to be assumed, of course, that ethical considerations, urged upon their governments by enlightened electorates, do not play an important part in the shaping of foreign policy. Upon questions presenting fairly clear moral issues, a people may pass sound and unequivocal judgment, but practical international relations do not ordinarily involve such issues. As elsewhere pointed out, the psychology engendered by conflicting foreign policies is not conducive to sound reasoning; and even normal thought about international matters is apt to be tinged, often unconsciously, with Chauvinism.

In the second place, statesmen, however internationally minded, do not generally feel at liberty to follow the dictates of altruism. As custodians, for the moment, of the welfare of their peoples, they must be loyal to their trusteeship. As individuals they might be idealists; as responsible officials they must not appear to hazard the interests entrusted to them. Practically speaking, and within limits, this is a sound and necessary principle of conduct in any form of government; in a democracy it is fundamental. Nor would it tend greatly to degrade the intercourse of states if it were not for the considerations suggested above. If statesmen could rely confidently upon the backing of an enlightened public opinion they might cast their foreign policies in a more liberal mould; but this they cannot always do. There is altogether too much truth in the following remark of a recent writer:

> If the officials of any government pursue policies which sacrifice the national interest or involve the nation in commitments and entanglements without the hope of material gains, they are so fiercely set upon by adversely affected groups within the country that they are soon forced to change their policies or give way to another set of officers.[38]

This realistic view of the situation may as well be accepted as indicating one of the handicaps in the development of international society. The state's political capacity to participate in international government is not yet matched by an appreciation of ethical values in international life. International society will become such in the fullest sense only in so far as the essentially self-centered principle of nationality, still the dominating concept of its member states, gradually yields — as indeed it is slowly yielding — to the dictates of what the late Lord Haldane once happily termed the higher nationality.[39]

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CHAPTER V

THE SOCIETY OF STATES

I. RISE OF THE MODERN STATE SYSTEM

Inasmuch as international government is built upon a society of national states, its development into anything like a system was impossible until the foundation was laid by the establishment of such a society. The term " society " is used precisely; it relates not merely to the existence of a certain number of states, but to states in such relations as to give rise to social or community problems quite analogous to those with which individuals in society are obliged to deal. The state being thus fundamental to the whole theory and structure of international government, not only must its essential characteristics as a political unit be understood, but some consideration must be given to the group of states as a whole.

The former aspect of the state was considered in the last chapter; attention will now be turned to the latter, which may properly be discussed under two heads: The historical origin and development of national states as a type of political organization, and the make-up of the society of states which has come into existence as the result of this development. Within the former topic will fall a rapid review of the types of governmental organization which characterized the ancient and medieval world, and of the factors which led to the appearance of the new state system first formally recognized by the Peace of Westphalia in 1648; the elements of international government then existing; and the controlling influences which have moulded the system of 1648 into that of today. The latter topic leads into the realm of international politics in so far as the groupings of states within the international community have been influenced by political considerations.

The Empires of Antiquity

The national state of the present-day type is a comparatively recent phenomenon; the ancient world developed nothing closely analogous to it. The oriental states of antiquity took the imperial form, as in Egypt and Asia Minor. Created by conquest and supported by military force, they had no principle of internal unity strong enough to weld them into coördinated political groups.

Three characteristics of these ancient empires may be particularly noted: First, they developed no definite concept of political freedom, no ideal of individual liberty, such as lies at the foundation of most modern states; they were essentially despotic. Second, because of their large area, their comparative isolation, and their lack of common interests, they worked out no interimperial organization beyond the most elementary forms of intercourse. Third, despite their inherent political weakness, these oriental empires marked an enormous advance beyond the tribal stage of political development. They were the embodiment of the principle of individual subordination to a common authority — a principle essential to any comprehensive form of political organization.

The Greek City States

The next type of state in point of historical development was the Greek City State. Differing profoundly from the oriental empire in internal structure and external relationships, the political unit of the Greek régime, while far more hospitable to ideals of political liberty, nevertheless had fatal weaknesses from the interstate point of view. The Greek world was in many respects a miniature of modern Europe. A small territory was parcelled out among numerous cities, each of which constituted a political entity vigorously bent upon maintaining its independent political life. The very perfection attained by this city-state ideal proved to be its undoing. Such intercity confederations as came into existence were based upon considerations of narrow self-interest rather than upon any large conception of permanent political unity. It was the tragedy of Greek civilization, from the political point of view, that the independence of the group as a whole was sacrificed to the ultra-independence of its constituent city-states.

This form of political organization, in its characteristically intense local spirit, was unfavorable to the development of any comprehensive system of interstate relationships. It was not entirely unfruitful in this direction, to be sure. Arbitration of disputes between states became a settled policy, within certain limits; [1] the germs of the modern system of diplomacy are to be found here, and certain rules relating to the conduct of war were generally recognized.[2] But no systematic theory of interstate life was worked out; indeed, the particularism of Greek political thought negatived the development of any such theory.

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[1] See Ch. XVII.

[2] See Ch. VIII.

The Roman Imperial Régime

The Greek régime was followed by the Roman — Greek political separatism by Roman imperial unity. Roman law and organization followed the Roman legions, until the civilized world was brought within the orbit of a single political power. The Greek artistic and imaginative temperament was inhospitable to large political conceptions, outside the realm of theory; Roman thought, with its passion for law and order, easily grasped the conception of political unity and embodied it in a world empire. But the Roman imperial idea was incompatible with true international law or organization. The Roman régime is sometimes referred to as an early experiment in international government, but erroneously. The relations between the various parts of the far-flung empire were in no proper sense international, but rather constitutional, as Professor Potter has pointed out.[3] Rome recognized certain rights as between herself and her subject peoples, as, for example, in the declaration of war; but these rights were not thought of as standards of conduct between political equals, but rather as concessions to political inferiors. This distinction is fundamental; the government of a world state is one thing; international government quite another.

Nevertheless, Rome did contribute materially to the international government of the future. Her conception of the *jus gentium,* or law common to the various parts of the empire, entered into the Grotian system of international law, as will appear later.[4] So, also, the idea that legal rules were applicable to certain aspects of war was a valuable precedent upon which the modern law of war was based, even though the analogy was not complete. And, finally, the great Roman system of jurisprudence, surviving the fall of the Empire and entering into the thought of the Renaissance period, became one of the general formative influences in the development of modern international law.

Feudalism and the Holy Roman Empire

With the fall of Rome, in 476, and the loosening of the ties which bound her great empire together, the Western world became a prey to political disintegration. Not until Charlemagne, three centuries later, united much of Western Europe under his sway, did any large political unit appear, and that, in turn, fell apart under his successors. The centuries from the fifth to the fifteenth or sixteenth, commonly called the Middle Ages, were in general characterized by two more or less antithetical types of European political organization — feudalism and the reincarnation, so to speak, of the great conception of Roman imperial unity. The feudal state differed essentially from the national state of today. It emphasized the importance of the individual as opposed to the sovereignty of the group. Authority was defined in terms of loyalty as between lord and vassal; the feudal régime was particularistic in theory, stressing personal liberty and local self-government. Thus it was inconsistent with ideals of comprehensive political organization, in this respect being in marked contrast with the Roman conception of political unity and authority. Feudalism was based upon a system of land tenure; and from this came the conception that the exercise of political power was associated with territorial possessions — a conception that later became a fundamental principle of international law.

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[3] *Introduction to the Study of International Organization* (1st Ed., 1922), 31.

[4] In Ch. VIII.

The ideal of imperial unity, a legacy from ancient Rome, was embodied, politically, in the Holy Roman Empire, and spiritually in the Roman Catholic Church. The relations between these two institutions — their titanic struggle for mastery — form the most absorbing political theme of the Middle Ages. All that is in point here is their influence upon the ultimate political organization of Europe. Both opposed the extreme particularism of the period and thus contributed to the rise of larger political units; neither was destined to hold its own against the forces which culminated in the national state system of Europe.

In principle these two political systems, the feudal and the imperial, were antagonistic each to the other, and both to the rise of a system of national states. Feudalism tended to decentralize political power; it parcelled out political authority among a hierarchy of overlords, with an ultimate lord at the apex of the pyramid holding doubtful sway over his ambitious and turbulent retainers. It was distinctly hostile to the consolidation of authority in the hands of monarchs able to organize states and armed with the power to maintain them. On the other hand, the Holy Roman Empire was equally inconsistent in principle with the development of a state system. It was a feeble embodiment of the Roman imperial tradition, never in its palmiest days much more than a political hypothesis; and yet, such was the power of Rome even in decay, it exerted an influence out of all proportion to its real authority.

These two political institutions, feudalism and the Holy Roman Empire, go far to account for the fact that a thousand years elapsed between the fall of Rome and the firm establishment of national states. The former decentralized political power; the latter, assuming the imperial form, imposed upon Europe a sort of sentimental unity. Thus the growing spirit of nationality was imprisoned between feudalism below and imperialism above.

End of Imperial Unity

But these two forces could not permanently confine it. The Holy Roman Empire was weakened by its age-old conflict with the Roman Catholic Church. The concept of a dual unity, so to speak — a unity consisting of an ambitious temporal power, on the one hand, and an equally ambitious spiritual power, on the other — one imperial authority with two aspects, proved self-destructive. The Church aspired to temporal as well as ecclesiastical authority, and thus came into bitter conflict, not only with the Empire, but ultimately with the national kings. The issue was finally decided against the temporal pretensions of the Church, and even the ecclesiastical unity of the Western World was disrupted by the Protestant movement of the sixteenth and seventeenth centuries. The Church was put on the defensive even in the spiritual realm; its claims to the political overlordship of Europe were definitely ended.

The Holy Roman Empire, always more potent as a political ideal than as a political fact, ultimately ceased to command even the sentimental allegiance of Europe. It lingered on, in form, down to 1806, when the last emperor was deposed by Napoleon; but for centuries it was little more than a name, embodying a theory of unity utterly in conflict with the rising tide of national sentiment throughout the later Middle Ages. National kings armed with real power refused to yield allegiance to an unarmed ideal. The Peace of Westphalia (1648) really sounded its death-knell.

As Europe moved towards the era of discovery and of expanding commerce, feudalism increasingly demonstrated its weakness as a type of political organization. Petty wars, prompted by the rival ambitions of the feudal barons, fatally handicapped industry by wasting its man-power and disturbing the orderly processes of trade upon which it depends. Interstate commerce demanded domestic peace and order, the improvement of highways and other means of transportation and their security against the highwayman, currencies to lift trade above the level of barter, and systems of taxation whereby to finance the governmental policies necessary to these ends. Again, foreign commerce must needs be fostered by a system of exchanges, by the encouragement of ship-building, and by the maintenance of naval power for its protection.

Rise of the National State

Out of the chaos of feudalism emerged a form of political organization equal to these tasks. Some of the feudal barons, by force, intrigue, or negotiation, finally succeeded in establishing themselves as kings and in extending their sway over wide areas. Instead of becoming the despotic oppressors of their peoples they stood, in many cases at least, as the protectors of the masses against the oppression of the manorial lords.

Thus appeared the new national state. The petty feudal units combined along ethnic and geographical lines into a few permanent, well-organized nations. National languages developed within definite national areas, and over each a monarch held undisputed sway. This transformation of feudal Europe into a group of distinct states laid the foundations of modern international government. It marked the final disappearance of the idea of a common superior, or universal political authority, which had been the legacy of ancient Rome. It made possible the growth of a body of customary law properly denominated the law of nations; while now diplomacy could assume the dignity and permanency of a system of intercourse between responsible governments. And, finally, it brought about conditions favorable to the development of international commerce, which in turn demanded regulation and protection in the common interest.

Thus upon Roman and feudal foundations was built a new Europe, characterized by the appearance of a novel type of governmental organization — the national state, slowly moulded by the social, political, and economic forces of Medieval Europe. By the year 1500, at least four strong national states had become firmly established — England, France, Spain, and Portugal — while in northern and eastern Europe other states like the Scandinavian kingdoms, Poland, and Hungary had come into existence.[5] The new political order received formal recognition at the congress which met at Münster and Osnabrück in 1644–1648 to reëstablish peace after the Thirty Years' War.[6]

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[5] Carlton J. H. Hayes, *A Political and Social History of Modern Europe* (2nd Ed., 1924), Ch. I.

The appearance of the national state was a political development of the first order. It was, says Dickinson, commenting on the characteristics of this type of organization, the turning point "in the great and tragic history of Europe," marking "the defeat of the ideal of a world-order and the definite acceptance of international anarchy."[7] Whatever its weaknesses, and its ultimate fate, it has dominated the international relations of the modern world. "Of all the groups into which mankind is divided, the nations are at the present day the largest, the most powerful, the most vitally active, the most self-conscious."[8]

The transition from the old order, the same writer observes, has represented both gain and loss. In place of the "ordered solidarity" of the Roman Empire and the Catholic Church, we have the "European Anarchy" of sovereign, independent states which acknowledge no superior, whose brawls have kept the world in tumult ever since. But on the other hand, the rise of the national states, even though it was for the time being a disintegrating movement destined to have tragic consequences, will turn out to have been beneficent if the nations ultimately succeed in building upon the necessary foundations thus laid an ordered system of international government.

Political Organization of the New State System

What were the governmental relations existing between the members of this new society of states when it took command of the Western World? How far, and how, was it organized politically? In the first place, international law had been developed into what may properly be called a system. For several centuries collections of rules, based upon the maritime customs of the Mediterranean and Baltic cities, had appeared from time to time, beginning with the ancient Rhodian laws. While not international law in any proper sense, these codes afforded a background for the development of the international law of the sea, and contributed some specific rules thereto. So, also, in the fourteenth, fifteenth, and sixteenth centuries some of the principles that later passed into the body of international law had been taught by publicists of great learning and wide influence. Notable among these early writers was Victoria, a Dominican monk, who in the middle of the sixteenth century proclaimed the doctrine of a society or community of nations based upon the theory of the solidarity and interdependence of states; and the Spaniard Suárez, writing half a century later, who clearly expressed the idea that each state is a member of an international community of nations necessarily bound together by the tie of mutual aid and communion.[9]

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[6] A. S. Hershey, *The Essentials of International Public Law and Organization* (Rev. Ed., 1927), 62.

[7] G. Lowes Dickinson, *The European Anarchy* (1916), 13.

[8] F. J. C. Hearnshaw, *Democracy at the Crossways* (1919), 299.

The epoch-making treatise of Hugo Grotius, *de Jure Belli et Pacis*, appeared in 1625. While the genius of the Dutch jurist was manifested by his clear grasp of fundamentals, perhaps the chief merit of his work lay in its orderly arrangement and masterly analysis of legal principles scattered through the works of the many writers who had preceded him. While the Grotian system fell far short of completeness,[10] nevertheless now for the first time international law received comprehensive and systematic treatment; and for this great achievement Grotius has been called the Father of International Law.[11]

In the second place, diplomacy had come to be an established institution in international life. In earlier times an occasional and extraordinary incident in the relations of states, as, for example, in the making of peace treaties through special envoys, its potentiality as a means of continuous contact between states had been recognized by the establishment of permanent embassies at the capitols of the various countries. Not only this, but the customary rules governing the status of diplomatic agents in the countries to which they had been accredited had developed into a fairly definite code not substantially unlike that of today. So, also, the consular service, the remote origins of which are to be found in the Greek City States, had become firmly established; in fact, it then performed wider functions and enjoyed greater prestige, as compared with the diplomatic service, than it does at the present time. In the third place, arbitration was occasionally resorted to for the settlement of international disputes. Indeed, throughout the Middle Ages, turbulent as they were, arbitration was frequently invoked to avert the necessity of a resort to arms.[12]

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[9] See note on the forerunners of Grotius in Hershey, *op. cit.*, 65 ff.

[10] For example, he devoted but one short chapter to the rules governing the conduct of states not parties to a war — what is now known as the law of neutrality.

[11] For further reference to Grotius and his system see Ch. VIII.

[12] See Ch. XVII.

Development of the Society of States

It is to be noted that the society of states was at first exclusively European.[13] Until the nineteenth century Christian states alone were considered eligible to membership; but this rule went by the board when Turkey and Japan were recognized as members of the society in the latter half of the nineteenth century.[14] In point of membership the society has changed greatly since 1648. It has developed internally by combination and consequent simplification. Instead of the hundreds of international units then existing in Europe, there are now some thirty. So also it has developed in point of geographical scope, until now it embraces all the fully independent states of Europe, North and South America, and Asia.

All but a small minority of the more important states are now members of the League of Nations.[15] Admittance of a state to the League may be taken as practical recognition, by the general body of states, of its full international status, for only fully self-governing political units are eligible to membership in the League, under Article I of the Covenant.[16] Outside the strict territorial limits of the state system lie undeveloped countries which have fallen under the control, more or less completely, of certain states as dependencies of one sort or another — colonies, protectorates, or spheres of influence. These regions have given rise to important and difficult international questions; for the most part, however, these problems of the backward countries lie within the field of international politics, and therefore beyond the limits of this study. In so far as they have been dealt with by international government, as in the case of the mandate system and certain international treaties, they will be discussed in the proper connections.[17]

The three centuries, nearly, which have elapsed since the Peace of Westphalia have seen internal changes in the society of nations far more profound than those in its mere external form.[18] In brief, it has become a true society, in a sense and to an extent quite inconceivable to the diplomats at Westphalia. First, the law of the society has developed slowly but steadily. Taking its systematic beginning in the great treatise of Grotius (1625), it has been enlarged by custom, enriched by the work of great philosophical writers, and latterly expanded by deliberate international action, until now it is an established and comprehensive, though still inadequate, body of law. Second, the intercourse of nations has been transformed, both in spirit and method, since 1648. The great congress of that decade was, indeed, prophetic of the changes that have since taken place, for it was the first general international conference to deal with matters of concern to the whole society. Such gatherings have since become the commonplaces of international life — made possible by the quickened means of international communication, and necessary because of the manifold interests which the members of the society have in common. Especially did this movement characterize the century — the nineteenth — which saw the advent of the railroad, steam ocean navigation, the telegraph, and the cable. As compared with that of Grotius's time, the international society of today is inconceivably complex, interrelated, interdependent.

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[13] The United States was the first non-European state to be recognized as one of the community of states. Some twenty other American states have since been accorded recognition.

[14] See George Grafton Wilson, *International Law* (2nd Ed., 1927), 18–19.

[15] In fact, but two first class powers, the Russian Union of Soviet Republics and the United States, remain outside the League.

[16] Thus Canada, Australia, and the other self-governing British dominions, so-called, are members of the League.

[17] For a good brief discussion of these political problems see C. Delisle Burns, *International Politics* (1920), Ch. IV. Thomas Parker Moon, *Imperialism and World Politics* (1926), has a more extended treatment.

[18] In different connections this development is referred to. Space forbids more than a bare outline here.

Third, modern international society is characterized by a cosmopolitanism far more substantial and unifying than that of the seventeenth century. It is the cosmopolitanism of the printing press and the telegraph, of the external modes of the common life, of the principles and mechanism of government, of industry, and commerce. Finally, in spite of tragic examples to the contrary, the rights and obligations of the members of the international society, whether explicitly formulated in rules of law or implied from membership in the society, are better settled, and dominate international intercourse more effectively, than ever before since the birth of the society. States are guilty of unsocial conduct, to be sure, but the standards whereby to measure the social quality of national policies, no longer obscure or equivocal, are applied with a precision and potency unknown in any other age of the modern world.

II. Group Tendencies in the Society of States

At the present time there are some seventy members, all told, of the society of states. As already stated, the European group as recognized at Westphalia, numbering hundreds of independent states, underwent internal changes which reduced it to a mere fraction of that number. But two distinct epochs in state-making have since added substantially to the family — namely, the period at the beginning of the nineteenth century, when the Spanish colonies in America won their independence and were recognized as states; and that immediately following the World War, when several more new states were carved out of the former Russian and Austro-Hungarian monarchies.

Looking to the future, it is probable that the nationalistic movement now so pronounced in some quarters, notably in India and the Philippines, will in due time result in statehood, thus adding to the international family. On the other hand, the imperialistic policies of some of the dominant Western powers may conceivably result in the complete incorporation into their systems of certain dependent or satellite states now within the orbit of their influence.[19] Nor need this necessarily be the result of policies of conquest or coercion. The advantages of incorporation might possibly be deemed by such weak states full compensation for the loss of statehood. Such a development will depend upon various factors — the ultimate success of the federal type of governmental organization, the future strength of nationalism, and the rôle of the League of Nations as a stabilizing agency in international relations.

The state system as it exists today is more complex than would appear from a mere catalogue of its membership. For one thing, the community as a whole has been divided into two groups, unequal in point of numbers — the so-called Great Powers and the more numerous group of smaller powers; and this division has had momentous political consequences.[20] The lesser powers, in turn, are subdivided into several more or less definite groups, which should be briefly described. To begin with, in Europe there is the Scandinavian group — Norway, Sweden, and Denmark — based upon geographical propinquity, racial or linguistic likenesses, and certain common interests. Whether or not Finland, a neighbor and natural ally, will cast in her lot with them, does not yet appear. To a limited extent they have coöperated in the past with respect to their special concerns, and it is not unlikely that they will continue to make common cause on some issues.[21]

[19] Since Cuban independence was established there has been at times some sentiment among responsible Cubans for annexation to the United States. There appears to be little or none now, but internal conditions might revive it. See an anonymous article on "Cuba and the United States," 6 *Foreign Affairs*, 231 (1928).

[20] Discussed in Ch. VII, in connection with the doctrine of state equality.

[21] Burns, *op. cit.*, 22.

The Baltic Group

In Northeastern Europe is found another group of states which have exhibited tendencies to federate — the five Baltic states, Finland, Lithuania, Latvia, Esthonia, and Poland, all of which came into existence as a result of the World War. Save Poland these states have contiguous territories, and their interests are in some respects mutual. As against the aggressive expansion of Russia westward to the sea they would naturally be forced to make common cause. Finland hesitates as between this group and the Scandinavian; geographically she could readily cast in her lot with either. The group movement has taken form in some concrete treaty proposals relating to arbitration, mutual military support in case of attack, etc., but the conventions embodying these proposals have not been ratified. The dispute between Lithuania and Poland over Vilna [22] has thus far proved an obstacle as to these two countries. Poland, having a population double that of the combined populations of the other four countries, is naturally reluctant to concede equal voting power, under a plan of confederation, to each of her smaller neighbors, while they, in turn, are likewise reluctant to place themselves under Polish domination.[23]

The Little Entente

In Central Europe, Jugoslavia, Roumania, and Czechoslovakia have drawn together politically to form what is called the Little Entente, Czechoslovakia taking the lead in the movement.[24] Its original purpose was to serve as a check upon the military and political ambitions of Hungary; but the necessity of a substantial degree of economic unity within the group has broadened the basis of the Entente. Trade agreements have been entered into between its members to facilitate commercial intercourse, and in general the Entente policy has been to demonstrate that the break-up of the old Austro-Hungarian monarchy did not mean the Balkanization of Central Europe.[25]

The Little Entente has been given recognition at some of the post-war international conferences,[26] and has formed commercial and political relations with Poland, Austria, and Italy.[27] Whether it will ever develop into a true federation of the small states of Central Europe remains to be seen; indeed, its aim may not be federation but rather close political and economic relations based upon treaties between state and state. However this may be, it has been said that the Little Entente has developed into "something closely resembling a Great Power." [28]

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[22] This dispute concerns the possession of the Vilna district, which is claimed by both countries, but was seized by Poland in 1922 and has since been under Polish occupation. See Ch. XXXIII.

[23] R. L. Buell, *International Relations* (Rev. Ed., 1929), 238–239.

[24] For the texts of the agreements on which the Little Entente is based see *W. P. F. P.*, Vol. 6, 112 ff.

[25] That is, its division into discordant little states likely to quarrel with one another and to disturb the peace of Europe.

The Balkan States

In Southeastern Europe the small Balkan states, Bulgaria, Greece, and the Serb-Croat-Slovene state, would naturally form another closely related group, but thus far their development has not been in that direction. Roumania would fall, geographically, within this group, but, as already seen, she has allied herself to some of the so-called Succession States of Central Europe; [29] so also the Serb state has allied herself with the Little Entente. In some respects these Balkan states form a distinct group, not only geographically, but in point of history and mentality; racially they are more or less diverse. The idea of federation has been advocated by Balkan writers, and more rarely by Balkan statesmen, for many years, but nothing has come of it. Many grave obstacles to such a union exist — a keen nationalistic spirit, racial animosities, differences in economic status and in governmental organization. The Turco-Balkan War of 1912 demonstrated the strength of these countries when united; the ferocious Inter-Balkan War that immediately followed was equally impressive as a demonstration of the spirit which has hitherto proved an insurmountable obstacle to helpful international coöperation in the Balkans.[30]

China and Japan

In Asia there is the possibility of a federation of commanding power in the union, economic if not distinctly political, of China and

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[26] For example, the Genoa conference of 1922 between Russia and the Allies.

[27] Hershey, *op. cit.*, 143 and references in note.

[28] Quoted by H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (1922), 60. See article by Eduard Beneš on "The Little Entente," *Foreign Affairs*, Vol. I, No. 1, 66 (1922); also A. J. Toynbee, *Survey of International Affairs* (1920–1923), 287–303, and (1924), 440 ff.

[29] The group of states that were erected upon the ruins of Austria-Hungary.

[30] See Buell, *op. cit.*, 238–239.

Japan. Despite the conflicts in policy that have characterized their recent relations, these two states may in time, under pressure of competition with the nations of the Western World, join forces more or less closely to form a dominant Far-Eastern group. Japan with her over-population and her need of raw materials and markets to support her industry, and China with a vast area, a wealth of raw materials, and enormous potential purchasing power, form a natural economic unit. When China attains anything like the political stability enjoyed by Japan, and Japan consequently abandons a policy of exploitation for one of coöperation on a basis of equality, economic self-interest, to say nothing of the natural ambition to dominate the East as against the West, may bring these countries into close and friendly political as well as economic relations. The choice seems to lie primarily with China. Whether a united and self-conscious Chinese nation shall look to the West for her political ideals and theories, or " turn to her most consistent disciple, Japan, and follow her in her new ways," will be a decision of great importance in international relations.[31]

The British Commonwealth of Nations

The British Commonwealth of Nations is the outstanding example of a group of states, non-contiguous but closely associated for certain purposes. A political phenomenon unique in history, it is not to be taken as illustrative of any discernible tendency within the society of states. It is the result of political evolution, not of deliberate statecraft. It has been a process of decentralization as between the Mother Country and the dominions, rather than one of discovering a set of common interests as the basis of group coöperation. The result of the Imperial Conference of 1926 seems to have been to recognize the theoretical equality, internally and externally, of the autonomous communities within the British Empire — equality each with the others and with the Mother Country as well. This status of equality, however, is subordinated to the interests of the group in the international sphere by the acknowledgment of an obligation on the part of each member of the commonwealth to coöperate with the other members in the conservation of such interests.[32]

[31] Elbert Duncan Thomas, *Chinese Political Thought* (1927), 292. See also George H. Blakeslee, *The Recent Foreign Policy of the United States* (1925), 288 ff.

[32] For text of the report of this Conference see *Current History* for January, 1927, 564 ff.

This Commonwealth of Nations is a political aggregate of the utmost interest and importance; what it may ultimately develop into as an international factor cannot now be foreseen. If the external policies of its members should gradually diverge, its influence upon international affairs, as a group, will correspondingly diminish; but if, on the contrary, the foreign policies of its members should prompt them to make common cause on important issues, it would be a potent factor in the councils of the nations.

The Central American Group

In the Western Hemisphere a similar tendency of nations to draw together in groups may be observed. For a century the five states of Central America — Costa Rica, Guatemala, Honduras, Nicaragua, and Salvador — have been interested in projects of federation; indeed, in 1825, they succeeded in organizing a Federation of Central America, but it lasted only about a dozen years. Since that time repeated efforts have been made to restore it, but unsuccessfully. In 1921 four of them — Salvador, Honduras, Costa Rica, and Guatemala — signed a treaty which established the Federation of Central America as a sovereign and independent nation, but the treaty never went into effect. Two years later, at a conference held in Washington, the project was revived, but without success.

However, the Central American states have achieved a substantial degree of group solidarity, both political and economic. At a conference held in 1907 several treaties to that end were signed, and a Central American Bureau created to promote the common interests of these states in a variety of fields — commerce, agriculture, industry, education, etc.; but this Bureau passed out of existence after a period of fifteen years. In 1922, at a conference in Washington, an important treaty of Peace and Amity was signed, the main purpose of which was to discourage revolutionary movements in the Central American republics. They bound themselves not to recognize a government in any one of the republics which should come into existence by means of revolution, and to prohibit the organization of revolutionary movements against any recognized government in Central America. At the 1907 Central American conference a Central American Court of Justice was set up; like the international Bureau it passed out of existence, however, after a brief career. This project was revived in 1923, under a treaty which also established international commissions of inquiry and provided for the limitation of armaments.[33] A Central American federation would mean a state of some five million people instead of the present group of individually feeble states — a state with great natural wealth and a strong strategical location.

The Latin-American Movement

These Central American states are also embraced within a larger American movement including South America as well. This movement began with the famous Congress of Panama in 1826, where an abortive scheme for the confederation of South America was launched. Since then various attempts have been made by different combinations of Latin-American states to enter into closer political relations, the last of them being the informal A-B-C movement, so-called, of a decade or more ago — the A-B-C states being Argentina, Brazil, and Chile, and their aim being to increase their influence in Latin-America. One of the important coöperative acts of these powers was their tender of good offices, in 1914, in the dispute between the United States and Mexico over the American occupation of Vera Cruz. So, also, they have entered into compulsory arbitration and disarmament agreements; but the movement has not thus far resulted in any close or formal association between them.

The Pan-American Movement

Of greater importance is the Pan-American movement, dating as far back as the first half of the last century but taking definite form in 1889, when the first Pan-American Conference was held at Washington under the auspices of the United States. In all, six conferences have been held, the last one at Havana in 1928. The most substantial result of this movement has been the creation of the Pan-American Union, an administrative body located in Washington.[34] Besides these regular conferences, a variety of other conferences dealing with a wide range of subjects — financial, commercial, scientific, humanitarian, and the like — have been held from time to time. The Pan-American group of states is bound together by no formal organization save the Pan-American Union, and that, curiously enough, had no treaty basis until a convention was signed at the sixth Pan-American Conference at Havana, in 1928, providing for the continued coöperation of the American Republics by means of periodic meetings of the International American Conferences, and through the Pan-American Union, whose organization and functions are regulated by the convention.[35] The movement has so far been non-political, concerning itself rather with matters such as the development of better communications between the members of the group, a uniform system of weights and measures, banking, sanitation, and other allied interests. Of late, however, there has been a disposition on the part of the Latin-American group to inject political issues into the deliberations of the conferences. Particularly was this true at the Santiago Conference of 1923, where they raised the question of establishing an American League of Nations. This met the opposition of the United States and was dropped, at least for the time being.[36]

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[33] On this Court see Ch. XVIII; and on the Central American Commission of Inquiry Convention see Ch. XXXII. On the Central American movement generally, see Buell, *op. cit.*, 243 ff. and references. D. G. Munro, *The Five Republics of Central America* (1918), Ch. VIII, traces the movement for the establishment of a Central American federation.

[34] This Union is discussed in Ch. XIII, Sub. VII.

This issue was indicative of a line of cleavage between the United States, on the one hand, and the Latin-American countries, on the other. Inspired in a measure by fear of the predominant influence of the United States in the Western World, there are in these countries influential advocates of Latin-Americanism as opposed to Pan-Americanism. This Latin-American ideal, embracing the republics of Central and South America, is avowedly based upon the essential unity of these countries in point of tradition, language, race, and culture. It recently took form in a movement to establish a Latin-American League; it has not yet passed beyond the stage of agitation, however, and there is grave doubt whether these Latin-American nations are, after all, homogeneous enough as a group to coöperate effectively, or economically independent enough to risk placing the Pan-American movement in jeopardy by organizing one exclusively their own.[37] True, they have a common national tradition, similar languages, and geographical propinquity; but any movement for political union would be seriously jeopardized by wide diversities in culture and national interests.

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[35] See editorial by James Brown Scott on the work of this Conference, in 22 *A. J.*, 351.

[36] But President Wilson proposed, in his first administration, and as part of his Latin-American policy, that the nations of America should unite " in guaranteeing to each other absolute political independence and territorial integrity "; and this proposal was embodied in a treaty, which, however, was not approved by the other states. See J. H. Latané, *From Isolation to Leadership* (Rev. Ed., 1922), 193.

[37] On Latin-Americanism, see Blakeslee, *op. cit.*, 160 ff. Also article by Paul Scott Mowrer in the *New York Times Magazine Section* for May 8, 1927.

The Federation of Europe

The movement recently launched for a comprehensive union of European states is potentially the most impressive illustration of this group tendency. Pan-Europa, as the proposed federation has been styled, has for its immediate objectives the promotion of better trade relations between its members, the reduction of armaments, and other measures looking to the permanent peace and economic well-being of Europe. A Pan-European Congress was held at Vienna in October, 1926, attended by representatives from all the European states; great enthusiasm prevailed but no practical steps were taken to further the movement.

It has recently received new impetus from authoritative sources. In September, 1929, in connection with the Tenth Session of the League Assembly and at the request of M. Briand, French foreign minister, the representatives of twenty-seven European states, members of the League of Nations, met to consider what M. Briand later described as " the institution between the peoples of Europe of a kind of federal bond which might establish between them a system of constant solidarity and permit them in any necessary case to enter into immediate contact for study, discussion, and settlement of problems of common interest."

The proposal was favorably received, and to M. Briand was delegated the task of drafting a memorandum dealing with it more specifically, to be submitted to the various governments concerned for their observations, and to be made the basis of a comprehensive report to a conference of European states held during the 1930 Assembly of the League. In May, 1930, M. Briand's memorandum was transmitted to the foreign offices of all the European members of the League.

The Briand Plan of Union

The plan of union proposed is tentative and highly elastic. In brief it contemplates an organization closely analogous to that of the League of Nations. First, its directive organ would be a Conference composed of representatives of all European states members of the League. Second, executive functions would be delegated to a Committee made up of representatives of a restricted number of European states, the duty of which would be to study political, economic, social, and other questions concerning the European community and not yet dealt with by the League of Nations, and to serve as the union's " instrument of action." Finally, a Secretariat would be set up to handle administrative matters such as might be committed to it by the Conference or the Committee, to serve as a medium of communication between the governments concerned, and in general to act as the secretarial and administrative organ of the union.

The Briand plan makes two points clear: First, that the union contemplated, in its immediate objectives, at any rate, must be primarily political rather than economic. The fundamental aim is to establish confidence between European peoples by developing a system of arbitration and security through the progressive extension of the guarantees set up in the Locarno agreements to the whole European community; and this political foundation once laid, there could be built upon it " a European system of production and exchange by means of the gradual liberation and the methodical simplification of the circulation of goods, capital, and persons . . . according to the needs of the national defense of each state."

The ideal sought by such common political action would be " the creation of a common market, thus raising to a maximum the level of human well-being within the boundaries of Europe."

Second, the union in all its activities is to be kept strictly within the framework of the League of Nations. It would be what is termed in Article XXI of the League Covenant " a regional understanding " for the maintenance of peace. It must not substitute itself for the League in tasks committed to the League by the Covenant or by treaties, but must coördinate its activities with those of the League. " There can be no question," says M. Briand, " of constituting a European group outside of the League, but on the contrary it is a question of harmonizing European interests under the control and within the spirit of the League by incorporating within its universal system a limited system, which therefore would be all the more effective." Because of this relationship between the federation and the League, he proposes that the union should be at first confined to states which are members of the League.

M. Briand's plan contemplates " a federation built not upon the idea of unity but of union." That is, " it must respect the independence and sovereignty of each of the states, merely assuring to all the benefit of collective solidarity for the settlement of political questions involving the fate of the European community or of one of its members." It cannot be a superstate; like the League of Nations, it is rather to be a scheme of coöperation.

Finally, M. Briand disclaims any assumption that the proposed union would be in opposition to any political group in or outside of Europe not within the League of Nations, evidently having in mind the United States and Soviet Russia. On the contrary, he points out the need of friendly coöperation with extra-European nations, as well as with European nations, not members of the League.

Purposes of the Proposed Union

As for the tasks to which he would set his proposed federation, M. Briand suggests, among others, the progressive lowering of tariffs; coördination in the development of means of intercommunication, such as roads for increased motor traffic and canals; the regulation and improvement of inter-European traffic; the coördination of the work of the European waterways commissions; agreements between railways, and a régime of European postal, telegraph, telephone, and broadcasting systems; financial encouragement for economically underdeveloped states; the settlement of certain labor questions of a special European character; the regulation of inter-European immigration, and greater uniformity in respect to laws dealing with such labor interests as workmen's pensions, accident insurance, and the like; the promotion of common health interests by the extension of the methods already successfully worked out by the League health organization — the prevention of European plagues, the regeneration of agricultural districts, the fight against occupational diseases and infant mortality, the exchange of information and personnel between the various state health organizations, and kindred activities; intellectual coöperation as between educational institutions in scientific research, in bettering news agencies, etc.; the development of more frequent and intimate intercourse between the various European parliamentary groups, " for the purpose of cultivating a political ground for that work of a European Union that would require parliamentary sanction, and in a general way to improve the international atmosphere of Europe by mutual understanding." [38]

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[38] The text of M. Briand's plan for a European Union may be found in XXXII *Current History,* 1181 ff. (September, 1930), with article thereon by John B. Whitton, pp. 1177 ff. For the text of the British reply to the Briand memorandum see *New York Times* for July 17, 1930, and for extended editorial comment thereon see *Manchester Weekly Guardian* for July 25, 1930. On the general question of European federation see "Pan-Europe" by Edouard Herriot, 8 *Foreign Affairs,* 237 (January, 1930); "The United States of Europe" by Winston Churchill, *Saturday Evening Post* for February 15, 1930; "The Proposed Federation of European States." Articles by Count

The governments of all the states eligible to membership in the proposed federation responded to M. Briand's invitation to submit their observations on his memorandum. While applauding his ideal of a more united Europe, and endorsing his practical purposes, these official communications made it clear that the Briand plan bristled with difficulties. Apart from modifications of the plan in matters of detail suggested by some of the governments, and conditions upon its acceptance in any form, either expressly stated or thinly veiled, proposed by others — such as that of Italy, for example, to the effect that European Union must be preceded by a general reduction of European armaments, or that of Germany looking to a preliminary revision of the Versailles Treaty — the fundamental question remained as to the advisability of such a Union. This question was raised by the British reply to the Briand memorandum, the argument being that all the distinctively European interests contemplated by the Briand scheme of federation could be fostered by the League of Nations, new agencies to that end being developed within the League if needed, without certain grave risks attendant upon the organization of a new body — the hazard of creating discord and division within the League, of stirring up intercontinental rivalries, and of antagonizing countries outside Europe.

M. Briand's report, based upon these official replies, was brought before a conference of the European states concerned at the opening of the eleventh session of the Assembly in September, 1930, and later debated in the Assembly, but without formal action. During the session another conference of European states set up a broadly representative committee, with M. Briand as chairman, to make a systematic inquiry into the project of a European federation.

Recently the movement has made some headway along economic lines through the establishment of international cartels or ententes, and the organization of international trade associations and amalgamations of one sort or another.[39] Indeed, it has been proposed that this economic movement be actively fostered by the several governments, so that Europe may compete more nearly as an economic unit with the rest of the world.

Carlo Sforza and John B. Whitton, XXXII *Current History,* 658 ff. (July, 1930); David Mitrany, "The Case Against Pan-Europa," XXXIII *Current History,* 65 (October, 1930).

[39] See article by Julius Klein on "International Cartels," 6 *Foreign Affairs,* 448 (1928).

Pan-Nationalism

Brief mention should be made in this connection of certain broader group movements, based on racial affinities rather than on economic or geographical grounds. These movements together have been characterized as Pan-Nationalism.[40] Among them are Pan-Germanism, much discussed before the war; Pan-Slavism, which contemplated a more or less definite union of the one hundred forty million or more Slavic peoples in Europe; the Pan-Angle movement for the greater unity, social or political, of the English-speaking peoples of the world; Pan-Latinism, aiming at closer coöperation between peoples of the Latin race in Europe and Central and South America; Pan-Hispanism, seeking the union of all the Spanish peoples of the world; the Pan-African movement, Pan-Islamism, and the Pan-Asiatic movement. These movements, if carried through would, of course, have a profound effect upon international relations; but they are quite unlikely to succeed, if for no other reason, because they run counter to the existing state organization of the world. Political units based upon race, even for limited purposes, would invariably cut across the boundaries of solidly entrenched states, and loyalty to the national state will undoubtedly prove stronger than the racial tie.

Regionalism and Nationalism

The foregoing are some of the more important illustrations of the present group tendency among the nations. These associations are prompted by a variety of motives — a desire for the greater security thus afforded, the economic advantage of the larger group over the small independent unit, the natural neighborhood feeling inspired by geographical contiguity, or a sense of racial or cultural oneness. They are made possible as never before by the ease with which contacts of all sorts may be maintained through improved means of communication. The theory on which they proceed, in so far as they are based primarily upon economic or geographical considerations, is that "regionalism" rather than "nationalism" is the proper basis for the grouping of peoples. Regionalism, it is claimed, is justified both from the standpoint of the defensive value of natural frontiers and on sound economic principles, having regard to the needs of modern industrial life; while nationalism overstresses the sentimental factors which lie at the foundation of political autonomy.

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[40] On Pan-Nationalism see Buell, *op. cit.*, Ch. IV.

Some see in regionalism, taken in a restricted sense, a threat against the integrity of the state itself. A state may not be an economic unit, but rather a group of such units, differing from one another in economic needs and by no means equally well served by the same economic policies. Having regard to the potency of economic factors in modern life, the ultimate result of such a situation might conceivably be new alignments of groups and thus the creation of new states.[41]

Significance of the Group Movement

Just what effect this group development may have upon international government cannot be foreseen. It may be interpreted in two divergent ways. Some profess to see in it a movement in the direction of building up, perhaps in addition to an international organization that shall embrace all states, distinct groups of states bound together by some or all of the various ties which lie at the base of state organization — community of economic interests, likeness or similarity in tradition, a common language, etc. — groups that will become "permanent polities, uniting governments for definite administrative purposes and for limited regions or functions."[42] Such groups, it is argued, might teach the world the use of alliances, not for warlike enterprises but for the establishment of genuine and mutually advantageous international policies, and might be federated in a single system more easily than could all the states dealt with singly.

On the other hand, this movement, because it may result in closely knit, self-conscious groups, is feared by others as a menace to good international relations, in that it may develop into a vicious system of alliances. It is argued that the World War demonstrated the futility of the alliance principle of international organization; that alliance begets counter-alliance until the whole international atmosphere is charged with suspicion and fear; that the goal of international government is not alliances but one all-embracing alliance. Moreover, such groups, it can be reasonably argued on theoretical grounds, would prove to be an obstacle to effective world organization. More conscious of their strength than any single constituent state could be, and less dependent upon outside states because of their pooled resources, the inducement to form a comprehensive political unit would be distinctly lessened by this group organization; so that, on the whole, international organization would suffer.

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[41] See article by N. S. B. Gras, "Regionalism and Nationalism," 7 *Foreign Affairs,* 454 (1929).

[42] Burns, *op. cit.,* 32. On the group movement generally see Archibald Cary Coolidge, "The Grouping of Nations," 5 *Foreign Affairs,* 175 (1927), and Buell, *op. cit.,* Ch. X.

Group Tendencies and the League of Nations

The effect of the League of Nations upon this group tendency is problematical. Article XXI of the Covenant appears to recognize the propriety of a certain degree of group organization, providing that:

> Nothing in this covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace.[43]

The meaning of this provision is not entirely clear. It raises one important question, at any rate: How far could a group of states go, under an "international engagement for the maintenance of peace," without violating the first paragraph of Article XX of the Covenant? This provides as follows:

> The members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

Obviously a group arrangement ostensibly to further peace might have precisely the opposite effect; the form it might take and the declaration of its purposes would not necessarily be determinative of its character. It might well be a difficult matter, in point of theory, to determine whether, for example, a group engagement embodying mutual pledges of assistance in case of aggressive war, or pledges of neutrality in the event of attack upon a member of the group by an outside state, was or was not consistent with the spirit, even though within the letter, of the Covenant. So that in practice Articles XX and XXI of the Covenant will doubtless call for interpretation.

The debates on the Geneva Protocol in the Fifth Assembly of the League throw some light on this general question.[44] The British position regarding the Protocol, in brief, was that instead of trying to bring all the members of the League into a scheme to eliminate war as comprehensive as the one embodied in the Protocol, it would be better to work out regional arrangements for the attainment, locally, of the end sought. The Locarno treaties embody this idea; but they are carefully drafted so as to be in express conformity with the Covenant.[45]

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[43] That the Monroe Doctrine is a "regional understanding" as distinct from a national policy is by no means conceded by the Latin-American states.

[44] See Ch. XXXI, Sub. V, for discussion of the Geneva Protocol.

Significance of Post-War Treaties

Since the World War a large number of bilateral treaties in point here — thirty or more in all — have been entered into by the European Powers. They are variously called treaties of alliance, or of friendship, or of guarantee, or of cordial coöperation, or of friendship and security. Ordinarily they provide, among other things, for mutual aid in case of unprovoked attack, for the maintenance of friendly and coöperative relations, and for some peaceful method of settling disputes that may arise between the parties. Some of these treaties, notably the one between Germany and the Union of Socialist Soviet Republics, provide that if one of the parties should be attacked by a third power, the other will remain neutral. Against the German treaty it was urged in some quarters that it would be inconsistent with Germany's obligations under the League of Nations. Practically all of these treaties are between members of the League, but by no means all members of the League have entered into them; a number have been negotiated since the debate in the Assembly on the Geneva Protocol.

Except as stated above, no question seems to have been raised as to their conformity to the Covenant of the League. Most of them contain a statement, in one form or another, to the effect that the guarantees are designed, within the framework of the League, to strengthen respect for peace by adding to the sanctions which would be imposed in the event of peace being broken. Their purpose is to strengthen the peace guarantees set up in the Covenant of the League; they may be construed, however, as indicative of a disintegrating tendency within the League — a trend back towards the pre-war system of alliances.[46]

The tendency of a group of states having peculiar interests in common to draw together for their protection is illustrated by the treaty negotiated at the Washington Naval Conference between the United States, the British Empire, France, and Japan, relating to their insular possessions in the Pacific — the so-called Four-Power

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[45] The Locarno treaties are considered in Ch. XXXII, Sub. III.

[46] For comment on these treaties see Potter, *op. cit.*, 441 ff.

Pact. Whether or not the arrangement consummated by this treaty constitutes an alliance, it expressly contemplates joint consideration of the measures to be taken in case their Pacific interests are threatened by the aggressive action of any other power. The same tendency is exhibited by another treaty of the same conference — that between the states there represented relating to the policies to be adopted in matters concerning China, especially those provisions of the treaty wherein the eight powers, other than China, enter into stipulations respecting the sovereignty, independence, and territorial and administrative integrity of China, and provide for communication between them in case any situation should arise involving the stipulations of the treaty.

It is arguable that the disposition of small groups of states here and there to confederate for the protection of their local interests constitutes a menace to the League; that little leagues of a political character are incompatible with one all-embracing League — bound to make it structurally weak and inharmonious. This is not necessarily true, however. A group system of international organization, roughly modelled after the federal state, with local concerns dealt with locally, and the larger interests of the entire group committed to one all-embracing association of nations, would have distinct elements of strength. The reason has been well expressed by Buell:

> Nations in such regional groups, realizing the peculiar interests they have in common, are likely to make greater concessions to each other than would nations entering into an association embracing the whole world. The conflict of interests in a world association is much greater than in a regional group.[47]

The danger, if any, lies in the possible development of such groups into the sinister military alliances of pre-war days; and for that reason it is quite necessary to maintain a larger and more general grouping of nations, as a coördinating and moderating agency.

III. Problem of the Small State

States being grossly unequal in point of area, resources, and capacity for self-defense, under a régime of conquest the weaker would be absolutely at the mercy of the stronger. Before the World War the status of the small states of the world was much discussed, in view of the vigorous imperialism of some of the Great Powers.

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[47] *op. cit.*, 253–254.

Too weak to protect themselves, these small states seemed destined eventually to become the prey of their larger neighbors, unless safeguarded by some general international policy adopted for their protection.

One principle invoked to that end was neutralization, whereby, under agreement of the Great Powers, a small state would be given the status of permanent neutrality, disqualified from pursuing any external policy that might involve foreign complications, and guaranteed territorial integrity.

It was argued that this principle — which, by the way, had been applied not only to states but in modified form to great international waterways like the Suez Canal, and even to the establishments and personnel of the Red Cross — was capable of application not only to the weaker states but to areas of international competition like Africa and the Far East.[48] But as applied to small states, the fate of Belgium in the World War demonstrated that neutralization, without effective international guarantees behind it, was no solution of the small state problem.

Indeed, the neutralization of states was dictated chiefly by political considerations, as a means not so much of safeguarding the neutralized states as of setting up conventional guarantees against international friction in these areas. This expedient is not likely to be resorted to again, especially in view of the League guarantees of independence and territorial integrity.[49]

Another principle invoked was that of federation — the incorporation of the small states into larger political units, with ample recognition of the local autonomy of the constituent parts of the system. The British Empire was cited as a successful example of such a federated state. The difficulty with the principle of federation, conceding its wisdom, is the reluctance of the small group to yield its complete independence by absorption into the larger unit. Protection would thus take on the guise of extinction. Federal states are difficult to establish, and in the long run difficult to maintain; they either fall apart because of the weakness of the central authority, or lose their essential federal character by reason of the overshadowing growth of such authority.

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[48] For a discussion of this subject see "Neutralization versus Imperialism," 2 *A. J.*, 562 (1908); "Autonomous Neutralization," 11 *A. J.*, 607 (1917). Perhaps internationalization is the apter term to apply to the status of interoceanic canals.

[49] See M. W. Graham, "Neutralization as a Movement in International Law," 21 *A. J.*, 79 (1927); also Hershey, *op. cit.*, 194 ff. and notes.

Article X of the League Covenant

One weakness of the principle of neutralization was the lack of any dependable guarantee of respect for, or defense of, the neutralizing agreement. Another was the fact that the principle was applied, in practice, not on grounds of broad international policy, but as a matter of expediency dictated by Great Power politics. The framers of the Covenant of the League of Nations sought to establish a general guarantee of the integrity of large and small states alike by Article X, which provides in part:

> The members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League.

The scope and meaning of this article have been the subject of spirited controversy, both by non-member nations and within League circles. The subject is too large to be dealt with in detail here. In brief, two views have been taken, one being that this provision pledged every member of the League to the maintenance of the international *status quo,* and bound every member to defend, not only the independence but the existing frontiers of every other member state, by armed force if necessary. Thus, it was urged, the League was being used to guarantee the permanence of all the territorial readjustments made by the Peace Treaties, however unwise or unjust they might turn out to be. Opponents of the League denounced what they characterized as an attempt to crystallize the state system of the world for all time, claiming that it was too hazardous and burdensome a commitment for any nation to assume; and further pointing out that it involved a futile undertaking. They cited in proof the Congress of Vienna, whose work in redrafting the map of Europe after Napoleon was speedily undone in large part by political forces ignored by contemporary statesmen.[50]

On the other side it was argued that Article X did not envisage a static, changeless state system, but only guaranteed the territorial integrity and existing independence of member states " against external aggression "; that it meant an end of wars of aggression or conquest, but had nothing to do with internal revolutionary movements, or with territorial readjustments made with the consent of the state or states concerned. President Wilson's well-known position was that any League which failed to condemn and resist aggressive warfare would be a useless instrument of peace.

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[50] On this general subject see W. A. Phillips, *The Confederation of Europe* (1914).

With the development of the League, and in the light of its action in interpreting Article X, it has become clear that this contentious provision does not embody the obligations which its critics undertook to read into it. It does not necessarily perpetuate the territorial *status quo* established by the peace treaties; it simply means that no forcible annexation of territory shall be made, and that the territorial integrity and political independence of each member state shall be respected and preserved as against attack by an outside power.

But how " respected and preserved "? The Article further provides: " In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled." How far, then, is a member state bound to accept this advice and act accordingly? It is now clear that each state may decide for itself what its obligations are, in each case as it arises and in view of the advice of the Council. The Fourth Assembly, in 1923, had before it a resolution interpreting Article X, the second paragraph of which declared:

> It is for the constitutional authorities of each member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of members, in what degree the member is bound to assure the execution of this obligation by employment of its military forces.

This resolution failed of unanimous adoption only because Persia voted against it. It may be taken, therefore, to embody the League view of the legal duty of a member state under Article X, whatever may have been the intention of its framers.[51] This interpretation, while it has minimized the binding legal obligation of member states to make the Article effective, has also weakened it as a guarantee of the integrity of small states, declaring in practical effect that it raises only a moral obligation. But it is not therefore meaningless; it still affords the weaker states a more dependable guarantee of security than they have ever before enjoyed.

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[51] That Secretary of State Kellogg, in the negotiations concerning the so-called Kellogg Pact outlawing aggressive war, understood this to be the quite general interpretation of Article X, appears from his address before the Council on Foreign Relations in New York, March 15, 1928, printed as a special supplement to No. 3, Vol. 6 of *Foreign Affairs*. It is interesting to note that the pledge of non-aggression embodied in Article X of the League Covenant is no more drastic than that which now binds the parties to the Kellogg Pact; and that the obligation of each signatory to resist aggression by other signatories is, practically speaking, no more stringently binding under the accepted interpretation of Article X than under the Pact. For full discussion of Article X, see Bruce Williams, *State Security and the League of Nations* (1927), Ch. III.

Value of the Small State

The intrinsic value of the small state, as compared with the large, was much discussed during the World War, in view of what appeared to be the German imperialistic policy. The opinion was freely expressed in some quarters that the small states of the world not only would eventually be, but ought to be, absorbed into large political aggregates, " following the line of historical development which has created the large modern states of Europe out of a mosaic of tiny and warring fiefs." In this view the small state is incapable of playing a useful rôle in the world, affords no theatre for a worthy civic life, and inspires no deep patriotic sentiments.[52] On the other hand, the small state had its stout champions, inspired to defend it by the ruthless attacks upon Belgium and Serbia, and their heroic vindication of the right of the small state to live.[53]

This question does not directly concern international government, which accepts the state society as it is, undertaking to preserve rather than to remake its membership. It is probably true, in fact, that small states somewhat complicate the problems of international government; certainly an increasing number of such states would do so. Because the broader lines of international policy must be fixed, theoretically at any rate, by unanimous consent, the possibilities of obstruction increase with the number of states whose consent is necessary.

Sometimes it seems that small states, conscious of their material weakness, are more stubbornly insistent upon their abstract rights than the larger states, which may be disposed to yield to the general view because they feel better able to protect themselves against abuses of the power or right surrendered.[54] Again, the military weakness of small states, oftentimes combined with certain elements of natural wealth coveted by the more aggressive nations, exposes them to the danger of exploitation, and thus makes them disturbing factors in the international community. Furthermore, their general economic weakness, which they may seek to minimize by tariff barriers and other trade restrictions, renders them more or less suspicious and politically jealous of one another.[55] These considerations give point to a discussion of certain principles involved in what has already been referred to as the territorial *status quo* — more specifically, the maintenance of the state system within its existing limits in point of membership and territorial distribution.

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[52] H. A. L. Fisher, " The Value of Small States," *Oxford Pamphlet*, 1914.

[53] *Ibid.*, 17–18.

[54] " Contrary to common impressions," says Potter, " it is in the smaller and newer states that nationalism is found in its worst forms. A secure and satisfied nationalism is a stable factor in international relations and a good basis for international coöperation, but an insecure and still sensitive nationalism is not," *op. cit.*, 230.

IV. The Right of Self-Determination

Admittedly the problem of the *status quo,* or more explicitly stated, the question of how to deal with situations involving territorial and political changes in the state system, is one of great difficulty and importance. In brief, the situation in typical cases is this: Groups of people here and there have been denied statehood for one reason or another — perhaps because they have been considered too meager in number or too scattered territorially to afford a sound basis for national life; or because the states of which they form a part have been unwilling for domestic reasons to recognize their independence; or possibly by sheer force of historical events. But such groups, if politically minded, and especially if they have some of the requisite elements of political organization, naturally, and often passionately, aspire to it, and because it is denied them are in perpetual revolt, more or less open, against the political authority set over them.

Throughout modern history these groups have been bartered about by the dominant powers, or held in sheer subjection, with little or no regard for their wishes or the justice of their case. This was conspicuously true of the political adjustments made at the Congress of Vienna (1815), and may be said, generally speaking, to have characterized the attitude of nations even down to the settlement following the World War.

Gradually these groups have become vocal. Appealing to the basic principles of democracy they stand upon the right of self-government; or if it be a question of changing the political authority over them, they insist upon the right of being consulted about it. This position was graphically stated by the so-called Union of Nationalities — a group of representatives of the various nationalities, twenty-three in number, comprised in the polyglot Austro-Hungarian Empire, in session at Lausanne in June, 1916, in a cable to President Wilson:

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[55] McBain and Rogers, *op. cit.,* 55 ff. See Duggan, *League of Nations* (1919), Ch. IX, by Harry Elmer Barnes, on "National Self-Determination and the Problem of the Small Nations."

> No peace may last or deserve to last which does not recognize the principle that governments receive all their powers from the consent of the governed. There exists no right anywhere permitting the transfer of people from potentate to potentate as if they were property.

In general these non-state "nations," or groups, may be of either of two classes: Those which obviously lack some essential prerequisite to statehood, as, for example, a sufficiently numerous or compact population; or those which, given an opportunity, could enter the family of states as full-fledged members, with some prospect of success. The groups of the former class constitute what are called ethnic minorities, and present peculiar questions which are discussed in connection with the so-called minorities treaties;[56] the latter class require further consideration in this connection.

National Groups Aspiring to Statehood

National groups potentially capable of statehood naturally aspire to it; to remain under the power of an alien state is repugnant to the keen sentiment of nationality which characterizes such groups. The urge to become politically independent may reflect the instinctive longing of the group to govern itself; or it may represent a passionate reaction against policies of repression or of assimilation adopted by the dominant state to blot out the distinctive national characteristics of the group; or, again, it may be stimulated primarily by more or less acute political grievances — general misgovernment, unfair representation in the governing bodies of the state, policies discriminating against the group, and the like.

Whatever the fundamental causes of such movements, they constitute grave problems in international relations. The multi-national states, as they may be called, resist as a matter of self-preservation the pressure of their constituent groups or "subject nations" for independence, and the logical result is revolution.[57] The past century has witnessed a number of such movements. It has been an era characterized by striking manifestations of nationalism throughout the world, as already pointed out. It was inevitable that conspicuous triumphs of nationalism, like the unification of Italy, for

[56] In Ch. XXIV.

[57] On this subject see Buell, *op. cit.*, 28 ff.

example, or the consolidation of the German Empire, should stimulate the zeal of lesser groups to achieve independence.

Successful Movements for Independence

Some of these movements have succeeded; others have thus far failed. Modern Greece came into existence in 1826 as a racial minority revolting against Turkish rule; and the Balkan states, Serbia, Roumania, Bulgaria, and Montenegro gained autonomy by a similar revolt in 1878.[58] In 1831 Belgium, by an uprising against the Dutch, made good her independence, but as a neutralized state. Ireland gained dominion status, that is, autonomy within the British Commonwealth of Nations, as the result of a prolonged nationalistic movement; while Egypt has gained the recognition of her independence by Great Britain, under certain conditions which have not yet been fully adjusted, by vigorous and at times bitter agitation. At the present time numerous elements in India are making an insistent and at times threatening demand for autonomy, while the Philippines have repeatedly petitioned for independence. In the Near East the Kingdom of Iraq, in Mesopotamia, which is now under British mandate, is urgently insisting upon an early termination of the mandate and admission to the League of Nations.

Nationalistic movements such as these are more menacing to international peace and good will than would superficially appear. Not only do they strain relations between the group in question and the dominant state, but the aspiration for independence often finds sympathy, and even material support, in kindred groups in other countries, the resulting situation being distinctly inimical to good feeling between the nations concerned.

Thus, to illustrate, the Irish agitation for autonomy appealed strongly to Irishmen throughout the United States, who gave it substantial material backing, and thereby the relations between Great Britain and the United States were affected unfavorably. Indeed, these outcroppings of nationalistic sentiment are inevitably conducive to international friction. Especially to peoples which have won their independence by successful revolt, they make powerful appeal; and the liberal elements in all enlightened countries readily sympathize with them. But the nation immediately concerned naturally resents outside interference with what it considers a purely domestic concern.

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[58] At that time the conditional independence of Roumania, Montenegro, and Serbia was recognized by the Great Powers. Bulgaria did not declare her complete independence until 1908.

Self-determination and the World War

During and at the close of the World War there was much discussion of what was termed the right of self-determination, as applied especially to groups aspiring to independence. The principle was not indeed novel in international politics; it had been invoked on many occasions since the French Revolution, and even before, but usually in vain. The great European empires, Russia, Austro-Hungary, and Turkey, each made up of numerous national groups, dealt ruthlessly with all appeals to it, for to them it would have meant suicide.[59] Moreover, the principle was consistently ignored in practice by the European powers as applied to territorial changes affecting subject peoples, who were shuffled about like pawns on the political chessboard, with scant regard for their wishes. Even the United States on two occasions denied its application to cases which involved a change of sovereignty over territory.[60] The World War raised the issue in a form so acute that it could not be ignored at the Peace Conference. The numerous subject nationalities of Europe, anticipating the break-up of the multi-national empires, or at least two of them, took occasion early in the war to organize a movement wherein they proclaimed their right " freely to dispose of themselves." Allied statesmen thereupon went on record as pledged to establish the " independence of peoples," and to liberate alien populations from foreign domination.

In an address to the Houses of Congress in February, 1918, President Wilson proclaimed the right of self-determination by declaring:

> Peoples and provinces are not to be bartered about from sovereignty to sovereignty as if they were mere chattels and pawns in the game. Peoples may now be dominated and governed only by their own consent. Self-determination is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril.[61]

And with the peace settlement in mind he added that " all well-defined national aspirations shall be accorded the utmost satisfaction that can be accorded them without introducing new or perpetuating old elements of discord and an antagonism that would be likely in time to break the peace of Europe and consequently of the World."

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[59] Buell, *op. cit.*, 33.

[60] In the case of Hawaii in 1897, when a plebiscite was proposed to determine the wishes of the Hawaiian people as to annexation to the United States; and again, in 1898, in connection with the cession of territory by Spain to the United States.

[61] He recognized the same principle in the Fifth of his Fourteen Points.

Self-determination in the Peace Conference

Thus the statesmen of the allied nations entered the Peace Conference committed to the principle of self-determination, which was professedly made the guiding rule in dealing with the knotty territorial problems before them. In the main the Conference was true to its professions. It recognized the independence of four new states, Poland, Hungary, Austria, and Czechoslovakia, and the semi-independent status of Syria, Mesopotamia, and Palestine. Moreover, it further recognized the principle in several territorial readjustments — the restoration of Alsace-Lorraine to France, of Schleswig to Denmark, and of Transylvania and Bukowina to Roumania; while into Serbia were incorporated several millions of Serbs formerly in Austria and Hungary. Political exigencies forbade the application of the principle to other situations. For instance, the German Tyrol was arbitrarily set over to Italy, Austria was denied union with Germany, and the German colonies were placed under mandate without special regard to the wishes of the inhabitants. Moreover, after the Conference the European states recognized the existence of several new nation-states — the Baltic group, comprising Finland, Lithuania, Latvia, and Esthonia; the Ukraine, Albania, and Egypt.[62] In spite of the failure of the Conference to apply the principle to several cases clearly calling for it, never before had the right of self-determination been so consistently recognized in practice. That the Conference was not entirely consistent was due, not to ulterior motives, but to the inherent difficulties involved in many complex situations.[63] In areas like many parts of Eastern Europe, for example, where the populations are of diverse and often hostile races, it would be simply impossible to conform to the wishes of all the groups concerned without setting up a host of little nation-states having no basis whatever for statehood except racial homogeneity. Even in cases where the principle may fairly be applied, the gravest difficulties in procedure are encountered. To mention one of them: How shall the wishes of the people concerned in a change of sovereignty be ascertained? Census statistics may be resorted to on the question of nationality, but they are often entirely misleading, even if honestly taken. Plebiscites have been held, but frequently with indifferent success, for they are liable to gross abuses — intimidation of the voters by the states interested in the result of the votes, dumping of voters into the district, bribery, fraudulant practices in making up the voting lists, and unfair tactics of all kinds.[64] The peace treaties provided for nine plebiscites, the most important of which was in Upper Silesia, territory in dispute between Germany and Poland.[65] One of them is to be held after fifteen years — that in the Saar to determine whether the territory shall go to France or Germany. These plebiscites were guarded as much as possible against abuses, and were interesting experiments in international government.[66]

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[62] See Buell, *op. cit.*, 36. In two cases, at least, the denial of the principle seems to have been unfortunate, in the long run. Agitation for the union of Austria and Germany has continued ever since as a disturbing factor in European politics; and the policies of Italy in the former German Tyrol have caused bitter feeling in Austria and Germany.

[63] For a good illustration see article by Harold Temperley, "How the Hungarian Frontiers Were Drawn," 6 *Foreign Affairs,* 432 (1928).

No Universal Right of Self-determination

It is quite obvious that, strictly speaking, there can be no general right of self-determination applying indiscriminately to all ethnic groups. It is readily seen that to concede such a group right as of universal validity would be to create rather than to compose international difficulties. The fact is that these groups are a part of international society, and as such, like the full-fledged state itself, must subordinate their particular interests to the general good. Many of them are not fitted to assume the responsibilities of government, and would inevitably fail if they made the attempt; indeed, the fact that they demand it may itself be an evidence of political immaturity, harsh as this judgment may seem to be.[67]

It should be borne in mind, also, that a state has international obligations to meet, and unless it can discharge them with a reasonable degree of conformity to established international practice, it has no moral right to membership in the family of nations. Indeed, it is a grave question, in the abstract, whether international government would gain or lose by the multiplication of states. It is difficult enough with the present membership to secure agreement upon common policies; to increase the number of participating states while retaining the general voting rule of unanimity in the procedure of international bodies, would tend to increase correspondingly the difficulties under which international government now labors.

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[64] The attempt to settle the Tacna-Arica dispute between Chili and Peru by plebiscite is an interesting illustration of the difficulties involved.

[65] For the list see Buell, *op. cit.*, 38.

[66] On plebiscites generally see Sarah Wambaugh, *A Monograph on Plebiscites* (1920), published by the Carnegie Endowment.

[67] President Coolidge made this point in dealing with the petition of certain Philippine leaders for the grant of independence.

Problem of the Group Aspiring to Statehood

However this may be, the fact remains that the group which is eligible to statehood and demands it in vain, presents a serious international problem. One solution of it would be a resort to the principle of local autonomy — the grant to the national unit seeking independence of a wide sphere of local self-government while still remaining an integral part of the larger unity. This solution lies within the sphere of domestic policy, and therefore outside that of international government.[68]

Again, the principle of federation might be invoked in some cases to satisfy the demand of the national group for a more independent political life. Federation is well illustrated in the formation of the Swiss Republic and the United States of America; it involves the creation of a new and larger state by the union of smaller political groups — the substitution of one state of strength and dignity for several states of doubtful stability and value from the international standpoint. While international government might gain in some respects by a more general resort to the principle of federation, the balance of advantage is not entirely apparent. Here again the international value of the small state is to be appraised.[69]

It must be accounted one of the weaknesses of international government that it has thus far developed no adequate legal means of dealing with the situations discussed above. However disturbing they may be to international peace and good will, they are ordinarily treated as domestic questions, and therefore as outside the international sphere. Nor has the League of Nations any legal power to deal with cases involving the so-called right of self-determination. It was politically necessary and theoretically right to limit the competence of the League to international matters. Accordingly the Covenant provides that if a dispute between members " is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement." [70] So that even though the national group seeking to change its status should succeed in getting its case before the League by enlisting the sympathy of a member state, it could get no relief.

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[68] Buell, *op. cit.*, Ch. IX, deals with this subject under the head of " Multi-National States."

[69] McBain and Rogers, *op. cit.*, 55 ff.

[70] Article XV, Par. 8.

True, Article XI of the Covenant provides:

> It is also declared to be the friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

By virtue of this provision any member could call the attention of the League to the case of an oppressed or dissatisfied minority, and thereupon the League could exert its moral influence, even though the matter were essentially domestic; beyond that it could not go. So that for the present, at any rate, the ethnic group seeking statehood, or transfer to another sovereignty, or even amelioration of its lot under the same sovereignty, must be content with such concessions, if any, as the state concerned may make, with the right of appeal only to the " opinion of mankind."

V. Differing Characteristics of States

Such in outline is the system of states with which international government is concerned. Alike in their legal qualities, they differ widely in many of the essentials of international life — racial characteristics, historical antecedents, area, wealth, culture, political organization, and economic interests. In point of racial differences, the nations fall within various groups, while some individual nations present great and perhaps increasing racial intermixtures. Even though these racial variations may be gradually yielding to the cosmopolitanizing influences of modern life, nevertheless, within the family of nations, as within nations which are of heterogeneous racial stocks, they constitute a factor of appreciable importance in international relations.

In historical development these states differ significantly. Some have been more distinctively the product of evolutionary processes, the definite beginnings of which must be sought in remote periods of the past, while others took their origin in recent revolutionary movements. This factor often accounts for differences in political organization as well as in outlook upon international life. Geographically the nations run the whole gamut from the tropics to the semi-arctic regions of the world. These wide climatic variations account for correspondingly profound differences in many of the fundamentals of national life — natural wealth, soil productions, industrial pursuits, physical vigor, mental and temperamental characteristics.

In point of area and population the nations differ widely; nor do area and population necessarily run together. International relations present few more difficult problems than that of the nation small geographically but densely populated. Such nations necessarily develop a highly organized industrial life, and this, in turn, involves the delicate problem of markets and raw materials.

Nor is the national area always to be measured by the homeland alone. A number of nations have acquired colonial possessions in extent out of all proportion to the size of the parent country. "Italy is one-sixth as large as her colonies; Portugal one-twenty-third; Belgium one-eightieth."[71] France with a home area of some 212,000 square miles has a colonial empire of 4,500,000 square miles; while little Holland has colonial possessions sixty-two times as large as the home country — the third most important colonial empire in the world.[72]

Differences in Culture, Industry, Defensive Power

Some of these nations are advanced in culture, others what are called the backward countries. However invidious, and oftentimes difficult to make justly, this distinction may be, it must be recognized, and accounted one of the complicating phenomena in international relations. Religious differences also exist, and historically have assumed great importance in the society of states; but happily this factor is less disturbing than formerly and will, it is safe to say, play a steadily diminishing rôle in international affairs.

Industrially the nations vary greatly — in their supplies of essential raw material, their industrial organizations, their productive efficiency. So, also, commercially their competitive advantages in the international field are quite unequal. Some have adequate internal highways of commerce, ample means of access to tidewater, and the capacity to build up a system of international trade facilities, while others lack these important elements of commercial strength. Again, some are debtor nations, obliged to look abroad for the capital necessary for internal development, and others creditor nations, enjoying a surplus of capital for foreign investment. Bearing in mind the enormous influence of economic motives in the relations of nations, it is clear that these factors of industrial and economic strength or weakness play an important part in international government and politics.

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[71] Parker Thomas Moon, *Imperialism and World Politics* (1926), 1.

[72] Buell, *op. cit.*, 325 ff.

From the standpoint of defense, some nations occupy positions of relative strength by reason of comparative geographical isolation or natural strategic frontiers, while others are more vulnerably situated or closely hemmed in by potential enemies. And further, national wealth, population, and industrial efficiency enable some states to outstrip their neighbors in the maintenance of strong armies and navies, which may be taken to be the symbols of their relative international power and influence. Some states, having enjoyed the advantages of long political experience, find it easy to maintain stable and orderly governments; others, lacking such experience, are constantly troubled with disturbances in domestic politics which affect their relations with other states.

Finally, as already pointed out, the society of states does not by any means constitute a homogeneous unity, but is more or less broken up into groups which take form, because, while the constituent states acknowledge a large fund of interests in common with the society as a whole, they are at the same time attracted into closer local association by peculiar interests justifying, if not necessitating, the group formation. Small wonder then, it may be concluded from this rather impressive catalogue of national differences, that with such a constituency international government has made slow progress and is confronted with thorny problems.

On the other hand, modern states have an immense stock of common interests. All are benefitted, materially if not equally, by freedom of commercial intercouse; it is essential to each that its citizens should be able to travel and sojourn in all the others, in the enjoyment of rights adequately protected under national and international law; all are in greater or less degree interdependent industrially; all are struggling with much the same problems of national government, each drawing upon the experiences of others; economic problems are more or less alike in all; the culture of each is a matter of increasing concern to all; the prosperity of each inures directly or indirectly to the benefit of all; the annihilation of distance has perforce made them neighbors one of another, with inescapable neighborhood interests and obligations; and, finally, international peace is vitally essential to the well-being of all.

Bearing in mind that these many interests held in common are rapidly increasing, under the powerful influences that are building nations, hitherto isolated, into a community in the most literal sense of the word, one readily discovers grounds for optimism as to the future of international government.

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CHAPTER VI

STATE SOVEREIGNTY IN MODERN INTERNATIONAL RELATIONS

I. THE THEORY OF SOVEREIGNTY

It remains to discuss two attributes of the state that have very largely conditioned the development of international government — sovereignty and equality.

By the sovereignty of a state is meant, briefly, the supreme power by which it is governed — a power conceived of as unlimited and subject to no control except that which is self-imposed.[1] This supreme power may be exercised either internally or externally. Internal sovereignty is held to imply the right of the state to organize and maintain itself politically in its own way — to change its form of government at will, even by revolutionary means; to regulate by law its own purely domestic affairs; to exercise exclusive jurisdiction, with minor exceptions, over all persons and things within its territory — in a word, to be a self-contained, self-regulating political society. With this internal sovereignty of the state international government ordinarily has no legitimate concern.

By external sovereignty is meant the right of the state to be free from the compulsion of other states in the conduct of its affairs, both internal and external; it is sovereignty viewed from the standpoint of the state's relations with other states. With external sovereignty, or independence, international government is vitally concerned.

The theory of sovereignty originated in Europe when the national state system was taking form, and monarchs were engaged in a struggle to consolidate their power as against the Holy Roman Empire, the feudal lords, and the Papacy. In this contest the kings needed legal justification of their pretensions to absolute power, and the French jurists came forward with the theory of sovereignty

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[1] No attempt will be made to enter into a general discussion of sovereignty — an undertaking of great technical difficulty reserved to writers on political theory. The purpose here is to point out the practical bearing of the theory of sovereignty upon international relations. For definitions of sovereignty see J. W. Garner, *Political Science and Government* (1928), 158.

— a term first used by Bodin in the sixteenth century. Sovereignty was seized upon by the absolute monarchs as the attribute of a power unlimited, either internally or externally, by any will other than their own.[2]

With the rise of democracy the theory took the form of popular sovereignty, Demos being enthroned in place of the former monarch, and invested with the same unlimited power. The establishment of popular government merely changed the location of sovereignty, and regulated its exercise by constitutional rules. In theory sovereignty remained absolute, however profoundly its implications were modified by the disappearance of the monarch who deemed it synonymous with his personal will.

But while the shift of sovereign power from king to people left the theory of sovereignty practically unimpaired, the development of the early system of isolated states into the modern society of nations profoundly modified it as a working principle of international government. Of the many transformations wrought by the growing intimacy of nations, none has been more subtle than the wide gulf opened up between the technical and still widely held notion of sovereignty and the everyday practices of states.

II. PRACTICAL LIMITATIONS UPON SOVEREIGNTY

It may, perhaps, still be said, with Burgess, that technically speaking sovereignty is unlimited, unrestrained; according to this view, to limit it would be to destroy it, as power cannot be sovereign if it be limited. If legal limitations are placed upon sovereignty, it is still the state, in the last resort, that must interpret and enforce such restrictions, and in doing so it exercises sovereignty. But while this may be the sound technical view of sovereignty, in the practical relations of states it is quite another thing. From this standpoint sovereignty, far from connoting absolute and unlimited power, is hedged about and limited on every hand.[3]

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[2] There is authority for the view that it is a term of constitutional rather than of international law, merely implying the right of the state to regulate its own internal concerns. See J. W. Garner, "Limitations on National Sovereignty in International Relations," 19 *Am. Pol. Sci. Rev.*, 1 (1925). For Bodin's theory as to the nature and functions of sovereignty see F. W. Coker, *Readings in Political Philosophy* (1914), 230–236.

[3] Even internal sovereignty is not entirely unlimited in fact. While it is the right of a state, generally speaking, to determine its own form of government and to enact such laws as it may deem best, it can exercise neither of these rights without regard to other states and the rights of aliens within its

Sovereignty and International Law

In the first place, sovereignty as a practical matter is limited by international law, both customary and conventional; in fact, international law came into existence for the very purpose of imposing restraint upon the external conduct of states. To be sure, a state is physically free to violate a rule of international law, but if it does so it assumes international responsibility.[4] In point of strict theory, it has been held, the rules of international law are not limitations upon sovereignty, because they are " self-imposed limitations " upon the power of states, and " in the last resort they must be considered as the interpreters of their own rights and of their obligations to other states."[5] But practically, as elsewhere pointed out, states habitually conform to the requirements of international law, not in the exercise of a conscious choice between obedience and disobedience, but because it is universally recognized that the very fabric of international life rests upon the sanctity of those legal precepts which govern the relations between states.

Nor is it material whether or not the state has expressly consented to be bound by the rules of international law. The fact that it enjoys membership in the community of states implies its assent to those principles and customs which the general body of states recognize as binding upon them. For it to repudiate the laws which govern the community would be to read itself definitely out of the community. However it may be theoretically, in practice the state cannot escape the legal restraints under which it conducts its intercourse with other states and still retain full international statehood.

It is idle, then, to contend that a state is in any real sense free to disregard the rules of international law, and that this broad limitation upon its liberty of external action is really self-imposed. " It is a striking tribute to its supremacy that never in any public, official act has any state in our time dared to declare that it would not be bound by this law or its precepts."[6]

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territory. Indeed, while it is said that it has the right to regulate its own domestic affairs, some other state may raise the question as to whether a certain policy is wholly domestic or of international concern. See Garner, *article cited,* p. 9.

[4] So an individual is free to commit a breach of municipal law, but at the risk of punishment.

[5] J. W. Garner, *Introduction to Political Science* (1910), 254. For criticism of this theory see Garner, *Political Science and Government* (1928), 191 ff.

[6] Professor Garner, *article cited,* p. 13, following Rivier.

Sovereignty and International Treaties

In the second place, the state's freedom of action — its " absolute " sovereignty — is practically limited by the treaties and conventions to which it is a party. As elsewhere pointed out,[7] the relations of states one with another are regulated by an enormous mass of international agreements, covering a wide range of subjects, from the mere details of some administrative scheme, for example, to matters of fundamental importance like the exercise of the war power. The extent to which the conception of sovereignty as absolute has been modified by such international agreements may be indicated by the barest reference to such commitments as the Bryan Commission-Of-Inquiry Treaties, the Locarno Treaties, the Covenant of the League of Nations, the many existing bilateral arbitration treaties, and the Kellogg Pact.[8]

Again it is to be observed, that in strict theory these treaty limitations upon sovereignty are not technically such, because the voluntary assumption of an obligation is itself an exercise of sovereignty, not a restriction upon sovereignty.[9] But the fact that they are self-imposed does not alter the further fact that once so imposed, they are actual limitations upon the freedom of action of the states concerned. Indeed, to say that they are self-imposed is misleading, if the meaning intended is that states are perfectly free to enter into, or to hold aloof from, treaty relations. In fact they have no alternative, if they are to protect adequately their national interests and maintain a proper standing in the world of nations.

The New Conception of Sovereignty

Not to press this point further, it is clear that, theory apart, state sovereignty is much limited and must be taken in a wholly relative sense. Practically speaking, sovereignty no longer implies unrestrained power; on the contrary, state independence is rapidly giving way to state interdependence under the pressure of the movement elsewhere discussed as internationalism.[10] This process is analogous to, or rather identical with, that which has brought modern international government into existence; it is the social process. The age of national isolation ceased when that of steam and electricity began, and with it all possibility of thinking of sovereignty, as a working theory of international relations, in absolute terms.

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[7] Ch. XIV.

[8] For reference to numerous treaties limiting national freedom of action see Duggan, *League of Nations* (1919), 91.

[9] This principle of international law is pressed so far as to cover the consent of a nation defeated in war to the most humiliating terms of peace.

[10] See Ch. II.

International coöperation is not really optional. Just as the individual must conform to the social requirements of his environment, under pain of social coercion, so the modern nation must conform to the essential conditions of international society, at the risk of subtler but none the less effective compulsions.

Says a recent writer:

> Just as the old idea of natural rights has given way to the conception that the state has a right to do whatever it is in the interests of society in the long result that it should do, so it is becoming plain that the doctrine of absolute sovereignty set up to guard the state itself against interference by other states must ultimately give way before the conception of a society of nations.[11]

Commenting on the rigid theory of state sovereignty and independence, Woolf says:

> Complete independence today is merely a legal fiction, and if we are to make it a fact we shall have to destroy the international form of society which grew up in the last century and revert to the national isolation of a former age.[12]

And the redefinition, so to speak, of state sovereignty has been as salutary as it has been inevitable. It cannot be overemphasized that the central fact of international government is the socialization of the world of nations; as has been well said, in principle the old absolutist theory of sovereignty conceived of the state system as an " anarchy of sovereignties." [13]

This conception, now happily becoming obsolete but still lingering on into the new era, has been misleading, mischievous, and in a measure dangerous,

> since it gives rise to illusions and creates a mentality which has often proved to be an obstacle to the maintenance of peace and the advancement of the common interests of states. The pretended " prerogative " of sovereignty has often been invoked to justify national conduct which was in violation of the rights of other states and the common interests of the society of states.[14]

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[11] Theodore Marburg, *Annals Am. Acad.* Vol. 72, 142 (1917).

[12] *International Government* (1923), 346.

[13] Garner, *article cited,* p. 20.

[14] *Ibid.*

Just as the individual has quite commonly entertained the fallacy that social coercion necessarily restrains freedom, upon the theory that there once existed an unrestricted sphere of liberty upon which government has encroached little by little, each encroachment lessening by so much the original sum-total of individual " rights "; so as to the nation, it has been assumed that the fulness of its sovereignty is impaired by every surrender it makes of its unconditioned freedom of action.

Sovereignty and International Government

The common notion that sovereignty is necessarily " absolute," and therefore cannot restrain itself by voluntary undertakings without impairment, has been a serious obstacle to the development of international government. Dramatic appeal is made to it in opposition to proposals of international coöperation, and with great popular effect. The true test of the wisdom of an international policy is not, of course, whether it will commit the individual state to some specific obligation, but whether, by placing the general body of states under common obligation, it will, on the whole, conduce to the general welfare by setting up reciprocal rights and obligations. If it would have the latter effect, then no state by consenting to it impairs its true sovereignty; on the contrary, it exercises its sovereign right of consent to its own advantage.

Not only has the general tendency of the absolutist theory of sovereignty been unfavorable to international coöperation; on specific occasions the theory has been made the avowed basis of opposition to measures proposed for the advancement of international organization. Like the individual plea of personal liberty, it has sometimes done service as a specious ground of opposition; sometimes it has been urged in all sincerity as a fundamental and sacred attribute of statehood — a veritable ark of the national covenant.

It is of the utmost importance to understand that, even in theory, states do not impair their sovereignty by voluntary consent to measures of international coöperation. Such is the well-recognized principle of international law; the uncoerced surrender of rights still leaves the state sovereign so long as enough competency remains to enable the state to meet all the requirements of statehood.

Theory apart, states never in fact deem their sovereignty impaired by treaty obligations, even the most drastic, or by the rules of international law. Even though a treaty stand in the way of present action desired by the state, it may be argued that the present will of the sovereign state may be made to prevail, because in such event one of three things may happen: (1) The state may decide to abide by the treaty after weighing the prospective advantages flowing from action in violation of the treaty over against the considerations on the side of its observance, such as the good will of the other party or parties to the treaty, the possibility of reprisals in case of repudiation, international reputation for fidelity to treaty obligations, the importance internationally of faith in the integrity of treaties, and the like; or (2) the state may reject the treaty on the ground, recognized by international law, that circumstances have so far changed since the treaty was entered into as to release all parties from it — the familiar doctrine of *rebus non sic stantibus;* or (3) it may baldly refuse to stand by the treaty, thereby assuming legal responsibility for whatever damage may have been suffered by the other party or parties by reason of such refusal.[15]

Treaty Obligations do not Impair Sovereignty

Thus treaty obligations voluntarily assumed, however far-reaching they may be, do not impair sovereignty; rather they are impressive exercises of sovereignty. This would be true, even though a treaty bound the state permanently; but treaties of the type which further international organization — such as arbitration treaties and those establishing international agencies of one kind or another, like the Covenant of the League of Nations — are not of perpetual binding force; the same sovereign power that affirmed may disaffirm. So, also, it should be borne in mind that the renunciation of a right by one party to a treaty involves a like renunciation by all the other parties thereto, treaties ordinarily being reciprocal; so that even if the effect of a treaty were to impair sovereignty, a general renunciation of freedom of action would leave the principle of equality unimpaired.

It is clear that sovereignty viewed as absolute in any proper sense, that is, as importing the uncontrolled right of the state to translate its present will into policy, is incompatible with the idea of a true society of nations and a grave obstacle to international government. Such a theory, if acted upon, would go far to subordinate the most solemn international obligations to the whims of national policy, and constitute a potential veto upon effective international coöperation. But the theory, while at times obstructively insisted upon, has suffered modifications which have adapted it to a type of international life which requires emphasis upon interdependence as well as upon independence. Hence the supplementary doctrine that states may voluntarily assume all sorts of international obligations without limiting their sovereignty.

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[15] See Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), 238 ff.

It is to be observed that once the principle is admitted — as it is universally in the practice of nations — that treaty-making does not impair sovereignty, all theoretical limitations upon the scope of international government are removed. It then becomes simply a question of state expediency, not a question of state competency. If states, for example, may bind themselves, without loss of sovereignty, to arbitrate all their disputes, they may commit themselves to the most far-reaching schemes of international federation and still remain sovereign.

III. THE DOCTRINE OF INTERVENTION

To emphasize the newer conception of sovereignty is not to lose sight of its fundamental importance in international relations. Independence and interdependence are not antithetical terms; indeed they must coexist if states are to live well-balanced lives. Each supplements the other, the fullest realization of statehood depending upon an equilibrium between them. Independence is an invaluable attribute of the state. It enables each political group to develop in its own way, and to make its peculiar contribution to civilization. The only alternative to the present organization of independent states would be one cosmopolitan state, towards which, indeed, some writers think the world may be moving.[16] But while such a régime, completely realized, might perhaps be one of peace, it would almost inevitably be one of uniformity and stagnation, incapable of the initiative and resourcefulness possible under the present system of vigorous, independent states.

In theory, external sovereignty or independence is fully safeguarded under international law. Violations of the independence of one state by another, to be legal, must be justified on the strictest grounds; if not so justified they are condemned as illegal interventions — that is, as forcible interferences by one state, or a group of states, in the affairs of another, in violation of its right of independence.[17]

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[16] Potter, *op. cit.*, 18.

[17] Intervention is one of the most complex and difficult subjects in the

Grounds of Intervention

Modern history is full of interventions, justified at the moment on one ground or another — legal, humanitarian, political, or the fundamental right of self-defense. The authorities agree on one basic proposition, that the principle of external sovereignty implies the obligation of each state to respect the independence of every other state. This is obviously the sound rule if international law is to recognize and protect the integrity of states.

But beyond this fundamental principle lies a field of controversy, in which theory and practice are in hopeless conflict. It is impossible to deduce generally recognized rules from the practices of states; for not only have different states acted on different principles, but the action of the same state at one time has been irreconcilable with its action at another.[18]

The authorities agree that intervention may be legally justified on the strict ground of self-preservation; that is, in necessary self-defense one state may violate the theoretical independence of another. But who is to decide whether the exigency has arisen, or as to the measures necessary for a state's self-protection? The test of necessity is so subjective as to be, in many cases, one of policy rather than of law. Indeed, some writers say frankly that intervention is not a right in the ordinary sense, but "a political act, a summary procedure above the law, an exercise of sovereignty."[19]

This point deserves more than passing mention because of its practical implications. The justification of self-defense might be unquestioned, as in case of direct attack in war, but ordinarily the case is not so clear as that. Germany, for example, undertook to justify the invasion of Belgium on the ground of self-defense, the contention being that the German plans of defense made the invasion a matter of necessity, "and necessity knows no law." In other words, the advance through Belgium was a defensive offensive, so to speak. Under such a theory justifiable intervention would become a mere matter of strategy.

The recent anti-war movement has taken the form of a ban upon aggressive war — the outlawry of war, as it is commonly termed.

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whole field of international law. For a full discussion of it, reference must be made to the standard law texts; it is briefly outlined here because it involves an important problem of international government.

[18] T. J. Lawrence, *The Principles of International Law* (7th Ed., 1923), 121.

[19] C. G. Fenwick, *International Law* (1924), 161.

Such was the purpose of the famous Geneva Protocol; and such is the effect of the recently signed Kellogg Pact, under which the signatories renounce war as an instrument of national policy, reserving the right to make war in self-defense. But how to determine when a war is aggressive on the one side, and therefore defensive on the other, is a problem much discussed but as yet unsolved.[20]

While the necessity of self-defense is the most fundamental justification of intervention, many interventions have been placed on a variety of other grounds, legal, humanitarian, moral, or political. Strict self-defense, where the danger is direct and immediate, is a legal justification for intervention. So, also, intervention may be legal because in pursuance of a right to intervene reserved by treaty,[21] or when invoked to prevent or terminate an illegal intervention on the part of another state; [22] or resorted to for the protection of the interests of citizens of the intervening state when put in jeopardy in another state.

Interventions on moral and humanitarian grounds have been justified in numerous cases.[23] Ordinarily the provocation must be extreme, and intervention the last resort. It may very well be, as a recent writer suggests, that in view of the growing solidarity of civilized peoples, their broader sympathies and their keener sense of justice, such interventions will come to be more frequent in the future than they have been in the past.[24]

A third class of interventions have been justified on grounds of policy or interest. They include interventions to suppress insurrectionary movements in other states, on the theory that such movements are a menace to the domestic peace of the intervening state, or to prevent the spread of revolutionary doctrines.[25] Under this head fall, also, interventions to preserve the balance of power, historically justified on political grounds, or rather, at bottom, on the fundamental right of self-defense; [26] interventions by the United States under the Monroe Doctrine, originally placed upon the ground of self-protection, in view of the threatened intervention by the Holy Alliance in the struggle between Spain and her revolted American colonies, and later developed into what has been called "a doctrine of benevolent guardianship by the United States over the weaker states of the American Continent"; [27] and the interventions of the so-called European Concert of Powers during the past century, particularly in the Near East.

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[20] So, also, the same difficulty arises when it comes to justifying intervention to meet the menace of an indirect or remotely threatened attack, as by the creation of formidable armies and navies ostensibly for defense but conceivably for aggressive use. See Fenwick, *op. cit.*, 146.

[21] Illustrated by the intervention of the United States in Cuba, in 1906, under the so-called Platt Amendment.

[22] A familiar example is the intervention of the United States in Mexico to terminate the unlawful intervention of France under the Maximilian régime.

[23] For example, the intervention of the United States as between Spain and Cuba in 1898.

[24] A. S. Hershey, *Essentials of International Public Law and Organization* (1927), 239.

[25] The interventions of the Quadruple Alliance, following the Napoleonic wars, to suppress popular uprisings in Spain and Italy, fall into this class.

The Problem of Intervention

The mere enumeration of the grounds on which interventions have been justified indicates the difficulty of bringing it under legal regulation. The exercise of a right so indeterminate may easily be made a cloak for ulterior designs or an instrument of aggression. The practice has dangerous potentialities, and is obviously one with which international government may properly deal. It has been dangerous because states, whether acting singly or in limited groups, have been judges of their own right to intervene, with no accountability to any external authority; and thus acts which should be justified only on broad grounds of community welfare, or by the most urgent necessity for self-defense, have been resorted to for reasons of selfish national policy.

The problem is a difficult one. On the one hand, the right of independence must be safeguarded, unless the whole system of international government is to be undermined. This right is not merely traditional or theoretical; it underlies and conditions all the relations between states. This has been the legal view of the matter, the established rule of international law being that interventions are *prima facie* unlawful; indeed, this principle has been steadily gaining ground. "The present tendency among publicists," says Hershey, "is toward the acceptance of the principle of non-intervention as the correct and normal rule of international practice." [28]

On the other hand, the welfare of the whole community of states — and because it is a community — requires that a wrong-doing state, one guilty of unsocial conduct or failing in the fundamental task of maintaining a government that can protect life and property and administer justice, should in some fashion be held accountable. The dictates of the general welfare must somehow be made to prevail over the abstract right of independence.

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[26] European history since the middle of the seventeenth century has been full of instances of such interventions. The principle of the balance of power was considered the only rule of public policy whereby the integrity of the European state system could be safeguarded against the imperialistic designs of overambitious states.

[27] Fenwick, *op. cit.*, 148.

[28] *Op. cit.*, 243–244.

The doctrine of absolute non-intervention has been advanced as a protest against the constant meddling of powerful states in the affairs of their neighbors. But as a leading authority has well said:

> If this doctrine means that a state should do nothing but mind its own concerns and never take an interest in the affairs of other states, it is fatal to the idea of a family of nations. If, on the other hand, it means that a state should take an interest in international affairs, and express approval or disapproval of the conduct of its neighbors, but never go beyond moral suasion in its interference, it is foolish.[29]

Obviously modern states must recognize social obligations to each other and to the family of nations. While the conservation of the "collective interests of civilization"[30] may constitute a rather vague justification for intervening in the affairs of sovereign states, such collective interests do nevertheless exist, and must somehow be conserved.

IV. COLLECTIVE INTERVENTION

In so far as this end has been sought by means of intervention, two methods have been followed: The first has been the intervention of some state which, by reason of its proximity to the offending state, or because of its special interests in the general or particular area concerned, or because conditions there were adversely affecting its own domestic welfare, had or claimed to have a particular reason for intervention. The second has been collective intervention — that of a group of states assuming the right to intervene for the general good and as a matter of international "policemanship."

The former procedure is open to grave objections, as the history of modern international relations clearly shows. Intervention is too much a matter of state policy, as already pointed out, and too inadequately controlled by legal rules to be satisfactorily resorted to by single states, except, of course, in genuinely necessary self-defense or pursuant to a legal right to intervene. While a state may conscientiously deem it a duty to intervene in the affairs of a neighbor, and do so on what seems to it entirely sufficient grounds, its policy in that regard will almost inevitably appear to the neighbor, and may seem to other states, unjustified and aggressive, a situation not conducive to cordial international relations. Such cases are ordinarily aggravated by the fact that the intervening state is the stronger of the two; thus the sympathy of third states is naturally enlisted on the side of the weaker, and sympathy just as naturally begets the suspicion of unworthy motives.[31]

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[29] Lawrence, *op. cit.*, 134.

[30] Expression used by President Roosevelt in justifying his Panama Canal policy.

Nor is the fear of results adverse to the interests of the weaker state, and incidentally to the well-being of the whole state system, wholly unfounded in many cases. If intervention results in the occupation of territory, as it may, the temptation to remain is often reinforced by powerful economic motives; and even intervention by way of financial control tends to perpetuate itself. In either event a measure of exploitation is natural and almost inevitable.

Such considerations as these have strengthened the theory that interventions should ordinarily be collective, or international. Not only is intervention by a representative group of nations, rather than by one, apt to be more effective, but it is not so naturally open to the suspicion of self-seeking. The germ of the theory of collective intervention is to be found in the Concert of Europe, which acted upon the principle of collective responsibility for the proper solution of problems affecting the peace of Europe. The weakness of the Concert as an agency of intervention is elsewhere pointed out; [32] constituted as it was, and with European diplomacy what it was, the Concert never was able entirely to allay the suspicion that its motives were more or less mixed, its purposes not always single.

Intervention and the League of Nations

The problem remains unsolved because the nations of the world are not yet ready to endow any international agency with the specific right to intervene, and arm it with authority to make its interventions effective. The League of Nations is organized upon the general principle of collective responsibility, and is endowed with considerable jurisdiction over cases ordinarily suggestive of intervention. Several provisions of the Covenant are in point. Both the Assembly and the Council are empowered to deal " with any matter within the sphere of action of the League or affecting the peace of the world"; but to "deal" here obviously means to investigate, discuss, and perhaps recommend — it does not imply power of ultimate decision.

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[31] The recent policy of the United States in Nicaragua has been bitterly criticized both at home and abroad as imperialistic and illegal. Whether or not justified, it has been a disturbing factor in our relations with Latin America. For a strong argument in favor of collective intervention in such situations, see article by Walter Lippmann, "Second Thoughts on Havana," 6 *Foreign Affairs*, 541 (1928).

[32] See Ch. XII, Sub. II.

Again, Article X, already considered,[33] by pledging the members of the League to " respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League," inferentially confers the right of intervention, naturally under League or collective auspices, to make good this guarantee; its weakness, however, is that it still remains with each member state to decide for itself as to the measure of its duty in specific cases.

So, also, Article XI of the Covenant declares:

> Any war or threat of war, whether immediately affecting any of the members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations.

And this declaration is supplemented by the further provision of the same Article:

> It is also declared to be the friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

These provisions are comprehensive. If acted upon they insure at least a certain degree of publicity for disturbing conditions anywhere in the world, and a measure of international control over them. As a practical matter, however, they fall short of going to the root of the problem of intervention. For one reason, nations are reluctant to court criticism or distrust by acting in the rôle of censor over their neighbors, and the League has no corporate responsibility in the matter. On the other hand, with the machinery for collective intervention ready for use, nations will be more reluctant than heretofore to act upon their own responsibility. At any rate, it is of real value to declare so emphatically the general principle of collective right and duty.

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[33] See Ch. V.

Finally, if the circumstances which might otherwise warrant intervention involve a dispute between member states, they are bound, under Articles XIII and XV of the Covenant, to submit it to arbitration, to judicial settlement, or to the Council as a Commission of Conciliation; [34] and even non-member states, in case of disputes between themselves or with member states, may be brought within the obligations of the Covenant applicable to members, under Article XVII. Thus while the League does not insure collective action in dealing with the difficult problem of intervention, it promises to render valuable service by reason of its moral influence, if not of its coercive power, in situations that might otherwise go to the point of forcible interference with the independence of states.

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[34] But the disputants are bound to abide by the decision of the Council in such cases only when it is unanimously agreed to; and the League as such, that is, apart from the will of its several members, has no power of enforcement. See Ch. XXXIII.

CHAPTER VII

EQUALITY OF STATES IN INTERNATIONAL RELATIONS

I. Legal and Political Equality Distinguished

The doctrine of the equality of states is of fundamental importance to international government, and merits full consideration. It has long been one of the basic principles of international law. That Grotius recognized it as such in his system, though commonly affirmed, is at least doubtful; [1] but at any rate, it entered into the system elaborated by his successors, and has been a cardinal doctrine of the law of nations to this day.[2]

It is necessary, at the outset, to make one clear distinction, namely, between state equality in the legal sense, and equality in political status or capacity. In theory the sovereignty of states implies their equality before the law as one of their essential rights. Equality in this sense has to do with the legal status of the state as an international person; it is a corollary of sovereignty, the theory being that sovereign states, enjoying the same status as corporate persons in the interrelations of states, must be equal. It was summed up by Chief Justice Marshall in the classic phrase: " Russia and Geneva have equal rights." [3] It is analogous to the theoretical equality of natural persons before the law.

But political equality is quite another thing. It relates to the state, not essentially as a legal person, but rather as a participant in international organization, in the governmental activities of the society of states. Equality in the latter sense does not necessarily flow from sovereignty; it is not a fundamental " right " of the state, absolute and inalienable, any more than the suffrage, for example, is a " right " of the individual in the sense that it is rooted in the inherent nature of the state as a political association.

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[1] E. D. Dickinson, *The Equality of States in International Law* (1920), 40.

[2] In the Declaration of the Rights and Duties of Nations adopted by the American Institute of International Law, already referred to, the principle was stated as follows: " Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, 'to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them.' "

[3] Case of *The Antelope,* 10 Wheaton, 66.

This distinction will be reverted to later. Failure to observe it has led to great confusion in reasoning upon the qualities and relations of states. The principle of legal equality, of equal protection in the enjoyment of rights as between states, occasions no practical difficulties; the theory of state equality, taken in the political sense, is open to serious practical objections. With the proposition that states are equal in that all possess the same potential rights, whatever may be their relative capacity to realize those rights, there can be no quarrel. But the doctrine often deduced from this, namely, that states, being legally equal, must also be deemed politically equal, and accorded the same status in the processes of international government, is highly debatable. It is this doctrine to which attention is now directed, the phrase " state equality " being taken to have special reference to equality of political status.

The theory of state equality complicates international government because, as a practical matter, it is in conflict with the facts of international life. It is unnecessary to point out that states are grossly unequal in all that makes for weight and influence in international intercourse. To call Great Britain and Costa Rica equal because both are sovereign is to give the language of diplomacy an air of unreality.[4]

Two Views of State Equality

Because of this hiatus between the theory of political equality and the fact of state inequality, the practical consequences of which will be pointed out later, some authorities have advocated the repudiation of the theory, and the organization of the state system on a basis more consistent with actual status. The theory, they argue, has been not only unsound but mischievous, prompting the large states to do lip service to it while deliberately repudiating it in practice, and encouraging the small states to rely upon it for protection, but often in vain. Thus all the processes of international government are characterized by sham and hypocrisy. Recognition of the doctrine puts all states in a false position, " inducing minor powers to advance claims which they cannot maintain, and large states to promise immunities which they cannot grant." [5]

The critics of the principle insist that it is nothing more nor less than a legal fiction, because there never has been a moment since it was promulgated when it actually conformed to the facts of international life — never a time when all nations have been allowed to act upon the principle that they are equal; but that on the contrary, as stated by Mr. Richard Olney: "A crowd of international incidents goes to prove the principle to be one almost more active and better known in its breach than in its observance."[6]

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[4] On juridical equality and inequalities of fact, see Dickinson, *op. cit.*, 115.

[5] Frederick C. Hicks, *Proc. Am. Soc. Int. Law* (1909), 238 at p. 242.

> "The doctrine really exists," said Hicks in the address cited above, "only in an academic sense, and has no inherent virtue or strength. It is invoked only when it happens to fit in with the desires of a state confronted with a problem. At all other times it is ignored except as a reason for ceremonial rules, all of which could be justified on common grounds of courtesy."

This view was well stated by Professor Philip Marshall Brown thus:

> It would not be just, of course, to infer that a theory or alleged principle is unsound because it may not be generally accepted in practice. But statesmen are unable to acknowledge the truth of the theory of the equality of states simply because that theory is in patent antagonism with the actual facts of international life. From their point of view, and, it would seem, from the point of view of all reasoning men, it is unpardonable folly to assume that things which are unequal in almost every important respect are nevertheless equal to each other.[7]

Others insist upon the soundness of the doctrine. Conceding its weakness when put to the test, they nevertheless contend that it is the only valid theoretical basis of international relations. To admit inequality, they argue, would be to place the small states avowedly at the mercy of the large; as it is, the former do have a standard of right to which they may appeal, even though not always with success. According to this view, state equality is not a fiction but a very fundamental reality, deducible from the idea of natural rights, or from the nature of international society, or from the character of the state as an international person. This would be readily conceded as to legal equality; but it is urged that, even as to political equality, or, to be more specific, from the standpoint of participation in international organization, no other principle is admissible, because only by equality of participation, that is, by the expression of legal equality in terms of voting right, can the international law of the future be developed.[8]

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[6] 1 *A. J.*, 419 (1907).

[7] *Ibid.*, Vol. IX, p. 327. For a spirited attack upon the doctrine see Talcott Williams, "The Misleading Myth of the Equality of Nations," 96 *Annals Am. Acad.*, 124 (1921). See also Dickinson, *op. cit.*, 131 ff., for views of publicists who doubt or deny the principle of state equality.

II. THE GREAT POWER PRINCIPLE

Whatever may be the sound view of the doctrine of state equality, in the abstract, as a matter of international politics it must be admitted that Mr. Olney was fairly justified in the conclusion alluded to above. This has been most impressively demonstrated by the development of what is commonly referred to as the hegemony or leadership of the Great Powers. In the organization of the European State system, a distinction has become traditional between the so-called Great Powers and other nations, and all international relations have been more or less affected by it. Ever since the establishment of the system, and more especially during the past century, this distinction has been consistently recognized — a distinction based upon differences of position and influence rather than upon differences of legal rights. A small, self-constituted group of nations, called the Great Powers, have claimed and exercised prerogatives not enjoyed by the lesser nations.

This movement took definite form in the creation of the famous Holy Alliance at the close of the Napoleonic wars, in 1815. To the original members of the alliance, Russia, Prussia, and Austria, were shortly added England and France, to form the so-called Pentarchy. The alliance undertook to assume the political supervision of Europe, professedly in the interests of peace, but actually as guardians of the autocratic principle of government of which they were the outstanding exponents. Under the pretense of stabilizing the European order they intervened to suppress popular uprisings in Spain and Italy, and were contemplating intervention in behalf of royalist Spain against her rebelling American colonies, when the promulgation of the Monroe Doctrine, and the opposition of England, rendered the enterprise too hazardous, and it was abandoned.

The European Concert of Powers

Thus the Concert of the Great Powers of Europe came into existence. To these original members Italy was added in 1867. The

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[8] See address by Baron S. A. Korff, *Proc. Am. Soc. Int. Law* (1922), 43. See also discussion following address by Frederick C. Hicks. *Cited above.* Dickinson, *op. cit.*, 100 ff., cites and quotes numerous modern publicists on this question.

Great Power group was broadened by necessary implication when Japan was accorded a permanent seat in the International Prize Court proposed at the Second Hague Conference in 1907. By similar action of the Conference the United States was given a like standing.[9]

The activities of the European Concert, sometimes participated in by all the members, sometimes by two or more with the assent or acquiescence of others, have concerned some of the most important events in recent European history, among them being: The neutralization of Switzerland in 1815; recognition of the independence of Greece in 1827–1830; neutralization of Belgium in 1831, confirmed by the Treaty of London in 1839; the adoption of the famous Declaration of Paris and the admission of Turkey into the family of nations in 1856; [10] intervention to put a stop to the persecution and massacre of Christians in the Lebanon in 1860; the settlement of the peace between Russia and Turkey, and the conditional recognition of the independence of Roumania, Serbia, and Montenegro at the Conference of Berlin, in 1878; the neutralization of the Suez Canal by convention adopted by the Great Powers and by Turkey, Spain, and the Netherlands in 1888.[11]

The supervisory functions of the Great Powers may be classed under four general heads: First, they have applied the principle of neutralization to Switzerland and Belgium, as above noted; Luxembourg also was neutralized in 1867. These neutralizations were sheer exercises of Great Power authority, professedly in the interest of European peace.

Second, the Great Powers, acting as the European Concert, have intervened repeatedly in the affairs of the Near East and in Africa, again ostensibly to stabilize the international politics of Europe.[12] In the latter part of the nineteenth century they undertook to extend their system to the Far East, but finally desisted under diplomatic pressure from the United States and the armed resistance of Japan.[13]

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[9] See supplement to 2 *A. J., Official Documents,* 174 at p. 183.

[10] This declaration laid down four important rules relating to the conduct of warfare at sea.

[11] For a review of the activities of the Great Powers of Europe see Dickinson, *op. cit.,* 292 ff.

[12] Their Near Eastern activities have chiefly concerned the Ottoman Empire. Their interventions in Africa may be illustrated by the Berlin Congo Conference of 1884–1885, which recognized the independence of the Congo Free State, entered into stipulations concerning trade and travel within the Congo basin, and laid down general rules concerning the territories already acquired by them in Africa, and the establishment of future African protectorates. See T. J. Lawrence, *The Principles of International Law* (7th Ed., 1923), 245 ff.

Third, the Great Powers have in general taken the initiative in the development of international organization, as illustrated by the two Hague Conferences [14] and the movements resulting in the setting up of the institutions established by the Versailles treaty — the League of Nations, the International Labor Organization, and the Permanent Court of International Justice. Fourth, the Great Powers have dictated the terms of peace after every general European war from the Peace of Westphalia to the Versailles Conference.

Great Power Principle in the New World

The Great Power principle has followed a different course of development in the New World. Instead of taking the form of a Concert, a position of primacy has been assumed by the United States. Its rôle is purely political, resting upon no legal basis; and it finds its sanction in the predominant power and influence of the United States among the Western nations. Historically it originated in conditions, both in the Eastern and Western hemispheres, which dictated a policy of isolation for the newly established state, and to safeguard this isolation early American statesmen enunciated principles which logically developed into the assertion of New World hegemony. On certain occasions this self-assumed leadership has been asserted in the form of intervention by the United States in affairs affecting other American states. Its justification, like that of the European Concert, must be sought, not so much in the acquiescence of the other states affected — not always willing, be it said — as in the need of a supervisory function which organized international government has thus far inadequately exercised.[15]

Great Powers Under the League Covenant

The Covenant of the League of Nations, as will appear later, frankly concedes to the Great Powers a position of predominance, in that their representatives sit permanently in both the Council and Assembly, while only a selected group of the smaller powers sit in the Council. Technically, under the general rule of unanimity embodied in the Covenant, this predominance is theoretical rather than actual; practically, considered in terms of influence rather than of legal power, it is real. The constitution of the Council was a frank concession to the Great Power principle, dictated by practical considerations, such as the historical rôle of the Great Powers, their leading part in winning the war, and their greater responsibility, because of their actual and potential resources, for the future peace of the world.

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[13] A S. Hershey, *Essentials of International Public Law and Organization* (Rev. Ed., 1927), 242.

[14] But in the constitution and procedure of the Hague Conferences the principle of equality was observed.

[15] See Lawrence, *op. cit.*, 255 ff.

Such, in brief, is the development which has resulted in the exaltation of certain states to a position of predominant influence and authority in the family of nations. This primacy of the Great Powers has been universally recognized by publicists, and has been discussed in terms expressing, or implying, both distrust and approval. The Great Powers have been referred to as "the dictators of the international community"; as regulating "at their own pleasure the collective interests of other states"; as monopolizing "the management of important common interests."[16]

Is the status of the Great Powers legal, or extra-legal? Has it the sanction of international law, or is it simple usurpation? In the view that international law results from the general consent of nations, expressed explicitly or by customary acquiescence,[17] it is not clear that the Great Power principle has a legal basis. The position is at least arguable, however, that while, having regard only to specific instances of Great Power action, it cannot be said to have had legal sanction, the acquiescence of the smaller powers having been a yielding to necessity rather than a voluntary approval; yet when such action has become habitual over a long period of time, it raises the inference of rightfulness and may fairly claim the legal sanction of established custom.[18]

In the view that the hegemony of the Great Powers has a political rather than a legal basis, and must find its justification in the realm of policy rather than of jurisprudence, it may be reconciled with the principle of equality; and such seems to be the prevailing opinion of the jurists, who contend that to hold otherwise is to confound political with legal equality.

Justification of Great Power Principle

Whether or not the Great Power principle can be approved in theory, its practical justification is to be sought in the facts of international life. The interventions of the Great Powers may not always have been beneficial to the world because not always prompted by unselfish regard for the general welfare. On the whole, however, it must be said that international relations have been bettered by their supervision. Situations rendered intolerable by the petty rivalries of small states, or by the temptation to oppress or exploit undeveloped countries, or by the ruthless will to subdue revolting nationalities, have been relieved, if not eliminated, and a sense of collective responsibility has been slowly inculcated.

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[16] See Dickinson, *op. cit.*, 138 ff., for quotations and references.

[17] See Ch. VIII.

[18] See Lawrence, *op. cit.*, 252.

True, the Concert has been a sort of close corporation, and has therefore taken on a more or less sinister, self-seeking aspect to the small states. Moreover, the criterion of " greatness " in the make-up of the Concert has not been altogether reassuring to these lesser nations, or indicative of a lofty conception of the essential qualities of statehood. There is much truth in the remark of a recent writer:

> The conception of a state as so much power is primitive, and is connected with the obsolete conception that the essence of the state is the exercise of physical force.[19]

And yet, predominant military power has not been the sole test of the right to a voice in the Concert. Says Lawrence:

> A state does not become a Great Power because it is strong, though it cannot be a Great Power without being strong. The tacit consent of other states, and the action of those who were Great Powers before, give it the position.[20]

Membership in the Concert, on any given occasion, has been determined by the action of the existing members, prompted by mixed and varying motives — their own national interests, the nature of the exigency requiring their interposition, and the welfare of the general body of states. Its lack of fixed legal principles of organization has been at once an element of strength and of weakness: Of strength, because of the readiness with which it could adjust itself to new situations as they arose; of weakness, in that it gave the Concert the appearance of pure opportunism, and heightened the fear and distrust with which the lesser nations oftentimes regarded it.

But something more may be said in defense of the Great Power principle. It so happens, as Burns points out in the work cited above, that those states which possess predominant military power are also generally those having the greater population and wealth; so that, taking the world of nations as a whole, the Great Power principle results in some degree of approximation to government by

[19] C. Delisle Burns, *International Politics* (1920), 15.

[20] *Op. cit.*, 255.

a group of states possessing or controlling the major part of the world's resources.

Again, the Great Powers, because of their greater wealth and population, ordinarily have more world-wide interests than the smaller states, and therefore a more legitimate and vital interest in matters of international concern. For this reason there is a measure of political justice in their predominance — a defensible reason for giving them an international status not enjoyed by the small states. They are apt to have dependencies in remote parts of the world, their commercial interests ramify widely, and thus their stake in international matters is greater than that of the small states. Hence they are invariably represented in the great international conferences, whereas the lesser states may or may not be, depending upon special circumstances. So, also, it must be admitted that, as a general rule, the great states because of their wider interests produce men more capable of dealing with large questions of policy than ordinarily appear in states of minor importance; [21] hence on this score also there is some practical justification for the predominant rôle played by the Great Powers in world affairs.[22]

The Great Powers and State Equality

However the primacy of the Great Powers may be viewed in other respects, it is clear that it has weakened the principle of state equality; on this all the authorities agree. They differ as to the extent of the inroad made upon the traditional doctrine. Some appear to minimize it by stressing the fact that the leadership of the Great Powers is political in character and has no legal basis; that the Great Powers as such have no permanent organization; and that they act in an opportunistic fashion, dealing with each situation as it arises from political motives and by political methods.[23]

This distinction between political and legal status is less impressive to other writers, who see in the general consent of nations to the principle of Great Power hegemony its gradual incorporation into the public order of Europe. From this point of view the dogma of absolute state equality is becoming obsolete. Lawrence remarks:

[21] Of course there are notable exceptions to this rule — illustrated at the present moment by Beneš of Czechoslovakia and Venezelos of Greece.

[22] Burns, *op. cit.*, 19, notes a tendency toward the formation of a group of Middle Powers, to which he assigns Japan, France, and Italy, occupying what he describes as "a limbo intervening between the heaven of the Great Powers and the purgatorial state of smaller states."

[23] Hershey, *op. cit.*, 247.

That states must remain equal before the law in such matters as jurisdiction, proprietary rights, and diplomatic privileges is evident. But it seems almost as evident that they cannot remain equal in what we may term political rights and social standing, now that the society of nations has become self-conscious, and is preparing itself for the performance of legislative, administrative, and judicial functions.[24]

This practical inequality manifests itself in a variety of ways that will appear in later connections; it may be briefly illustrated here. The make-up of the Council of the League of Nations has already been mentioned, the Great Powers being given permanent seats, while the small states are represented by elected members.[25] The treaties for the protection of racial minorities in Europe, later discussed,[26] were required of several of the smaller powers, but not of Italy as regards the German minority in the Tyrol, nor of France as to the German minority in Alsace-Lorraine.

A still more impressive illustration of practical state inequality is afforded by the many instances in which the weaker states have been drawn within the orbits of the stronger. International law recognizes a group of political units not fully independent because under the influence, especially as regards their external relations, of a stronger protecting state or a group of states. The weaker unit may have fallen under this external control for a variety of reasons — for instance, as the direct result of war, or because of its general strategic importance, or of its especial significance to the dominant state from the standpoint of economic or military policy. The essential fact is that these political units, unable to maintain their full independence, have perforce fallen under the domination, more or less complete, of stronger powers. Within this group of dependent political entities fall protectorates, suzerain states, and protected states. The neutralized state is also an illustration.[27]

In so far as state equality and the Great Power doctrine are incompatible, the latter might be challenged on the ground that the equality of all states is more valuable, in the long run, than any practical advantage to be gained by according a privileged status to a selected group of them. But the political realists accept the primacy of the Great Powers as inevitable, and on the whole beneficial. Power implies responsibility; so long as nations are unequal in power the stronger must assume the greater responsibility for international government. A world organization based upon any other assumption would be out of touch with the most obvious facts of international life.

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[24] Lawrence, *op. cit.*, 265.

[25] This concession to the Great Powers was made a strong point of attack upon the League, the contention being that this avowed recognition of the superior position of the Great Powers was a repudiation of the doctrine of state equality, and a deadly blow at one of the fundamental principles of international law. See Robert Lansing, *The Peace Negotiations* (1921), Ch. III.

[26] Ch. XXIV.

[27] Familiar illustrations of this development are the protective relations which the United States has of late maintained towards Cuba, Panama, Haiti, and Liberia. See George Grafton Wilson, *International Law* (2nd Ed., 1927), 29 ff. On these external limitations upon the equality of states see Dickinson, *op. cit.*, Ch. VII.

Perhaps the two views with reference to the relation of the Great Power principle to the doctrine of state equality may be reconciled in a measure by the position taken by Lawrence, namely, that it is only when the Great Powers act collectively that they possess a rightful " superintending authority." He concedes that in their individual capacity they possess no greater rights than the lesser states.

> In matters connected with property, jurisdiction and diplomacy they are on the same footing as their smaller neighbors, nor do they claim as belligerents or neutrals privileges that would not be accorded to the weakest of independent states.

But when they take collective action they speak for Europe, and their decisions are respected by Europe. Writing before the League of Nations came into existence, Lawrence saw in the European Concert the possible germ of a modern reincarnation of the old notion of a common superior, in a body of the representatives of the leading nations — a world-wide rather than a European Concert.

III. Voting Equality and Unanimity

Despite the substantial limitations upon the principle of state equality discussed above, some of its practical results greatly embarrass international government. Equality, as a corollary of sovereignty, has been held to imply the equal right of every state, first, to have the same vote in the councils of the nations as every other state, regardless of practical inequalities; and second, the right of every state to refuse to be bound by any decision without its consent thereto. From the first right is deduced the rule, " one state, one vote " ; and from the second, the rule of unanimity.

With minor exceptions the uniform practice in international conferences has been to accord one vote to each of the participating states, thus placing them on a plane of absolute voting equality. The member states are counted, not weighed, no allowance being made for actual inequalities, or for the widely differing degrees of practical interest in the subject matter dealt with that often exist. In this respect the rule of international government is analogous to that generally regulating the suffrage in democratic states.

Now this rule does not satisfy the large states, nor does it necessarily serve the best interests of the small, in the long run. The former may be at great pains to formulate measures in which they are vitally interested, only to see them vetoed by a minority of small nations whose interest therein is practically slight, and perhaps purely theoretical. A situation that not infrequently arises is illustrated by the fate of the proposed International Court of Arbitral Justice at the Second Hague Conference. This scheme, elaborated at great pains by the leading members of the Conference, was defeated by a group of small powers standing passionately for the equality principle, and refusing assent because they were denied equality with the Great Powers in the distribution of the judges of the proposed court. On this question the votes of Haiti, Persia, and Siam were of equal value with those of Great Britain, France, or the United States. Another convention of great importance, that relating to the establishment of an International Prize Court, was adopted at the same Conference only after a prolonged contest hinging upon the principle of state equality, and was signed by several small states with reservations as to the article relating to the distribution of judges. Other like instances could be cited.

State Equality and International Activities

It is not to be inferred from what has been said above concerning representation and voting in international congresses and conferences, that the small and large states have participated in such international activities on a basis of equality. On the contrary, in comparatively few of the important conferences of the past century dealing with political questions have all the interested states been represented; and even when represented the smaller states have played minor rôles. Two illustrations will suffice.

At the Congress of Vienna, in 1815, all the states of Europe, except Turkey, were represented, but only three, Portugal, Spain, and Sweden, were admitted to the deliberations of the Great Powers, and they " did little more than ratify the decisions which the Great Powers reached, while the envoys of the smaller states were merely permitted to be present at Vienna and make known the wishes of their respective governments." [28]

At the Versailles Peace Conference of 1919 a similar situation existed. The conference was really a general world congress rather than merely a peace conference, more than thirty states and political units being represented. The membership was divided into three classes: (1) Belligerent powers with general interests, comprising the Great Powers; (2) belligerent powers with particular interests, more than twenty in number; (3) powers in a state of diplomatic rupture with the enemy powers, four South American states.

The Great Powers participated in all the proceedings of the Conference, and controlled it throughout. States of the second and third classes were permitted to take part in the sittings at which questions concerning them were discussed. Further, the regulations of the Conference provided:

> Neutral powers and states in process of formation may be heard either orally or in writing when summoned by the powers with general interests at sittings devoted especially to the examination of questions directly concerning them, but only so far as these questions are concerned.[29]

So, also, representation was unequal in respect to the number of delegates allotted to each state. The Great Powers were allowed five delegates each, and the other designated groups three, two, and one, respectively, for each member of the group. However, under the unit rule of voting which prevailed, the number of delegates was chiefly a matter of prestige and influence. The major part of the work of the Conference was done by the Supreme Council of Ten, which later became a Council of Five (the Great Powers), still later a Council of Four when Japan withdrew, and at one time a Council of Three, while Italy was out of the Conference.[30] As a matter of fact, the chief representatives of France, Great Britain, and the United States — Clemenceau, Lloyd George, and Wilson — controlled the decisions of the Conference. Probably no Conference in modern history better illustrates the practical inequality of states when it comes to matters of fundamental international importance.

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[28] Dickinson, *op. cit.*, 281.

[29] For text of these regulations see Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), *Appendix A, Document 10.*

[30] For a good brief account of the proceedings of the Conference see Potter, *op. cit.* (1st Ed., 1922), Ch. XXI. See also Dickinson, *op. cit.*, 348; *Documents Regarding the Peace Conference, Int. Con.* No. 139 (June, 1919).

But the smaller states have fared better in conferences dealing with non-political questions, such as the Red Cross Conferences of 1864, 1868, and 1906 at Geneva; the Brussels Conference on the slave trade of 1899; the conferences called to formulate plans for the various international administrative unions; and, finally, the great Hague Peace Conferences of 1899 and 1907.[31]

Whether or not this distinction between political and non-political questions, in the matter of state representation and influence, can be justified in theory, it is based upon sound practical considerations. It is true, and doubtless always will remain true, that the stronger nations are charged with heavier international responsibilities than the weaker; and thus they should have more weight in determining issues of broad international policy. In lesser matters their interests and responsibilities are more nearly on a parity with those of the smaller states.

The Versailles Conference has been criticized because it was so completely dominated by the Big Four and the Big Three, in arrogant defiance of state equality. But in no other way could it have reached decisions within reasonable limits of time; nor, in all human probability, would its decisions have been as wise and expedient as they were, even granting the grave unwisdom of some of them, had the abstract principle of state equality been followed to the letter. International politics and domestic politics are alike in that they are sciences of the practically attainable. Their very essence is compromise — not on principles in the abstract, but in their application to concrete problems and situations, in a ceaseless effort to approximate actual practice more and more nearly to sound theory.

The Problem of International Suffrage

It was suggested above that the one-state-one-vote rule might not be for the permanent good of the small states, in whose behalf it is invoked. Certainly, in the long run the Great Powers will not suffer the defeat of their measures at international conferences by the adverse votes of small states asserting their theoretical equality. But any radical modification of the customary procedure in calling and conducting international conferences, such, for example, as ignoring the recalcitrant small states in the make-up of these general conferences, or adopting rules of procedure that would arbitrarily curtail their voting power, would tend to disrupt the state system as a whole and jeopardize international peace.

[31] Dickinson, *op. cit.*, 282.

The problem of suffrage at international conferences is analogous to the difficulty presented in a federal system in adjusting the voting rights of the units composing the system. In organizing federal states, experience has demonstrated the necessity, and the justice, of apportioning representation according to population in at least one branch of the federal legislature. Thus in the United States and Switzerland the upper house of the legislature is organized on the basis of the theoretical equality of the several states and cantons, the other on the basis of population. In other words, some attempt is made, differing in practical result in the different systems, to recognize in a measure the political right of the larger units to a correspondingly larger voting power.

Some such adjustment as this seems to be highly desirable, if not necessary, in international government. The present equality rule is unsatisfactory. What Sayre says of the rule of equality as regards administrative bodies is measurably true of international deliberative bodies in general: " To give to states which are unequal in wealth, in area, in population, in native capabilities, in influence, and in military power, exactly the same voting power in a duly constituted executive organ would be to depart from justice: and no institution founded on injustice can permanently endure." [32] And he might have included in his catalogue of inequalities grossly unequal practical interest in many of the questions that come before international bodies. After the Second Hague Conference the opinion was freely expressed, especially in England, that the future success of such conferences was seriously jeopardized by the rule; that by pretending to ignore the inequalities of states in population, wealth, territory, armed strength, habits of thought, and conceptions of right and wrong, in all that goes to make up civilization, the Second Conference condemned itself to impotence.[33]

In fact, some modifications of the rule of voting equality are to be found in recently organized international institutions. In the League of Nations, as already pointed out, the Council is so constituted as to accord a larger voting right to the larger states; [34] but in the Assembly the traditional rule prevails. This scheme was bitterly criticized at the time because of its violation of the rule of absolute equality, and as earnestly defended on the double ground of abstract right and political expediency. So, also, the equality rule has been substantially modified in some of the international administrative bodies to be discussed later.[35]

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[32] *Experiments in International Administration* (1919), 160.

[33] See English expressions of opinion quoted by F. C. Hicks, " The Equality of States and the Hague Conferences," 2 *A. J.*, 508 (1908). This article is a strong presentation of the argument against the equality rule. See also Dickinson, *op. cit.*, 285 ff.

[34] In that they have permanent seats in the Council.

The Traditional Rule Strongly Entrenched

A franchise rule, whereby the voting privileges of nations would be more in accord with their actual international weight than under the prevailing rule of unanimity, would materially strengthen international government. The difficulties in the way of formulating such a rule, however, are so formidable that for the most part publicists have contented themselves with stressing the need of it.

In the first place, the innovation would perforce be initiated and sponsored by the larger states, and this would stir the bitter opposition of the small states. In the second place, there would be fundamental differences of opinion as to the factors entering into the relative value of states for voting purposes. Certain material tests could be applied with some degree of accuracy, such as the relative extent, population, and wealth of states; but how about the subtler qualities, such as governmental organization and efficiency, general culture, and the like? [36]

It is to be borne in mind that such a rule would not impair the theoretical legal equality of states; they would still enjoy equality before the law and the equal protection of the law — a status essential to a stable family of nations. They would not, however, under such a rule, enjoy the same capacity for rights, or equality of rights; nor is this essential to an international régime under law. In a word, political equality would be impaired without impairing legal equality.[37]

The rule of unanimity, that is, the general rule whereby the vote of a single state will suffice to defeat a measure before an international body, accentuates the potential evils of the principle of voting equality discussed above. In the domestic sphere, government by unanimity obtains almost nowhere outside the jury room.[38] It would paralyze any modern legislature; it often seriously embarrasses international conferences.

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[35] Ch. XIII. See Dickinson, *op. cit.*, 310, for summary.

[36] James Lorimer, *Institutes of the Law of Nations* (1883–1884), Chs. XV and XVI, undertook to lay down the fundamentals of such a plan. For an outline of his proposals see Hicks, *article cited above;* also Dickinson, *op. cit.*, 145.

[37] For clear statement of this distinction see Dickinson, *op. cit.*, 334 ff.

[38] And here the traditional rule is being seriously questioned.

An illustration of its practical consequences, viewed in the light of procedure in the domestic sphere, is afforded by the fate of an important measure in the Second Hague Conference. The proposition advanced by the United States for the compulsory arbitration of all international differences of a legal nature, with certain exceptions, after exhaustive debate was supported by thirty-five states and opposed by nine; accordingly it was lost.[39] Many another case in point could be cited.

It is to be observed, however, that the unanimity rule, which means that a state shall not be bound without its consent, is substantially weakened in practice by the Great Power principle. It will be pointed out later how treaties and conventions, supported by the leading powers, sometimes come to have the force of international statutes without the assent of the small states — save, indeed, as acquiescence in measures which it would be futile to oppose may be taken to imply assent.

The Rule of Unanimity

The unanimity rule is a natural corollary of the doctrine of state independence. If states are to be conceived of as free from external coercion, it follows that they cannot be bound by measures to which they have not assented. The general principle is valid and necessary, if international government is to rest upon the existing society of states. " There are no natural grounds of superiority or supremacy giving any state the right to lay down the law for another." [40]

But obviously the principle has limitations which are commonplaces of international practice. States may consent to be bound without their consent; that is, may agree in advance to abide by decisions which, at the moment they are made, may run counter to the will of the state. This happens, or may happen, whenever two states submit a dispute to arbitration, or to an international court, and agree to abide by the award or judgment. The decision will be against one state or the other, and therefore presumably against the present will of the loser. Compulsory arbitration treaties involve precisely this situation.

So that, after all, if the requirement of unanimity be conceived of as applicable essentially to the inauguration of basic processes and machinery, it is by no means an insuperable obstacle to international government. It is otherwise if the unanimity rule be pressed into service in the detailed work of administration, or unnecessarily adhered to in dealing with specific questions within a general field fixed by unanimous consent.

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[39] On this see Wm. I. Hull, " Obligatory Arbitration and the Hague Conferences," 2 *A. J.*, 731 (1908).

[40] Potter, *op. cit.*, 245.

The League of Nations may be taken as an illustration of these two points of view. It would be idle to contend that any nation should be coerced into membership in the League without its consent; it is of the very essence of the institution that states shall come into it, or remain aloof from it, as their interests may appear to dictate. But if they should come into a league the constitution of which prescribes action, within certain fields, by less than unanimous vote, membership implies consent to such action, and there is no real violation of the unanimity rule. The question would be, of course, how far states would be willing to come into a league so constituted.

Voting Rule in the League of Nations

The League of Nations is organized, generally speaking, on the unanimity basis. Article V of the Covenant prescribes the following rule:

> Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the members of the League represented at the meeting.

The next paragraph of this article prescribes that all matters of procedure, including the appointment of special committees, may be decided by a majority of the members in Assembly or Council.[41] By avoiding contentious issues so far as possible, the two bodies minimize with considerable success the obstructionist tactics incident to the rule; but its rather sinister possibilities now and then appear. For instance, the sole vote of Persia blocked the passage of an important resolution proposed in the fourth Assembly, interpreting Article X of the Covenant.[42]

However, apart from the matter of procedure, the League has made substantial inroads into the doctrine of unanimity, to be discussed later. So, also, the principle has been to some extent superseded in the procedure of international administrative bodies.[43]

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[41] It is not entirely clear what actions involve "decisions" and what mere matters of procedure. See Ch. XXI, Sub. III.

[42] See Ch. V, Sub. III.

[43] See Ch. XIII.

Thus it appears that the doctrine of state equality, interesting in its theoretical aspects, involves some important practical considerations. Equality of rights in the legal sense is one thing, political equality quite another. Considering the patent inequalities of states in respect to many of the factors which constitute a stake in the objectives of international government, and the greater responsibilities which the larger states must assume in the ordering of international affairs, the international franchise should be one more in keeping with international realities. From this point of view states are analogous to the constituent units of a federation, rather than to the individuals making up each unit. The international problem, like the domestic, is to devise some scheme that will give these units fair proportionate representation.[44]

As already suggested, very little serious attention seems to have been given to the solution of this problem, by way either of critical analysis of the factors involved, or of constructive proposals. The present rule is strongly entrenched behind the prevailing spirit of nationalism, and has become traditional. There is reason to believe, however, that with the slow but steady growth of the sense of international solidarity, the nationalistic point of view will gradually yield on this point to the international, just as, within the state, the individualisic attitude is giving way to the social, and that the nations will ultimately be reconciled to a just and expedient regulation of the international franchise.

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[44] Hicks, *article cited,* 550.

CHAPTER VIII

LEGAL BASIS OF INTERNATIONAL GOVERNMENT

I. International Law Defined

It is the purpose of this chapter to present a general account of the legal basis of international government — its origin, development, and general character. The subject is a large one, and can be presented only in outline; a summary review of it, however, is essential to an understanding of the system of governmental control now maintained by the nations of the world.[1]

Public international law may be briefly defined as "the body of generally accepted principles governing the relations between states."[2] Hershey's definition, which indicates a little more specifically the nature and scope of international law, is:

> That body of principles, rules, and customs which are generally recognized as binding upon the members of the International Community of States in their relations with one another or with the nationals of other States.[3]

International law is sometimes characterized as "public" to distinguish it from what is known as "private" international law. Briefly the distinction is this: Public international law is concerned primarily with the relations between states, while private international law is the body of rules regulating private rights in cases involving the conflicting jurisdictions of different states.[4]

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[1] No attempt will be made to state the specific rules of international law, save by way of illustrating their general content. Reference should be made to the standard texts on the subject.

[2] George Grafton Wilson, *International Law* (2nd Ed., 1927), 1.

[3] *Essentials of International Public Law and Organization* (Rev. Ed., 1927), 1.

[4] Private international law deals with such issues as the validity of a marriage solemnized in one state when called in question under the laws of another state; or the status of a contract valid in the state where it was entered into when it is alleged to be invalid in the courts of another; or when a divorce granted in one state is contested in another. In such cases the question is, shall the laws of the state where the marriage was solemnized, or the divorce granted, or the contract entered into, or rather those of the state where the

Private international law arises from the fact that there are in the world different territorial jurisdictions possessing different laws. It is a subdivision of national law and administered by national courts; it is international only in the sense that it deals with questions arising under differing systems of national law. Its true character is disclosed when it is treated under the title "The Conflict of Laws."

II. Historical Development of International Law

In Part I, the analogies between national and international law in point of origin and nature were pointed out, and the forces that have contributed to the development of international law discussed. In brief, law springs from the necessity for social control. Systems of law come into existence in response to social demands; they exist in solution, so to speak, in the social order, and take definite form, in the judgments of courts or the enactments of legislatures, when the social organism becomes too complex and specialized to be adequately served by primitive custom. So it was with international law. In germ, and in some of its simpler rules, its origin is ancient; as a systematized body of law, including both customary and conventional rules, it is distinctly modern.[5]

Force was the dominant characteristic of the interstate relations of antiquity. Kinship was the fundamental bond of unity in ancient society, conditioning both the social affiliations of the individual and the relations of group with group. Throughout the early period, and down to the era of Roman ascendency, as Lawrence points out, the theory was that nations owed duties to one another if they were of the same race, but not otherwise. States as such possessed no rights and were subject to no obligations.[6]

Greek Contributions to International Law

As for anything like a system of international law, it did not exist in antiquity. Groups too commonly bore the relation of conquerors and conquered, and their contacts were too meager and fugitive to

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issue arises, be held to determine validity? See John Westlake, *Private International Law* (1925), 1 ff.; W. E. Hall, *International Law* (8th Ed., 1924), 58–59.

[5] The following outline of the historical development of international law, necessarily brief as it is, may serve to throw some light upon the general development of international government.

[6] *International Law* (7th Ed., 1923), 15.

call for anything like systematized control. International law did not develop because " between the several independent states of antiquity no such intimate intercourse arose as to necessitate a law between them."[7] Greek political life, which took the form of a group of independent City States, fulfilled many of the conditions favorable to the development of true international law, and some beginnings in that direction were made.

While Greek warfare was characterized by great cruelty, nevertheless certain rules tending to mitigate the severities of war were recognized — such as those prohibiting the use of poisoned arrows, providing for truces or suspensions of hostilities for religious purposes, and guaranteeing the right of sanctuary. So, also, the inviolability of envoys sent from one state to another was recognized. These rules were collectively known as the " Customs of the Hellenes."[8]

Perhaps the most conspicuous Greek contribution to modern international government was the development of the practice of arbitration as a method of settling international disputes. Arbitration, as has been said, grew naturally in the soil of Greece. It was applied to a variety of issues, and its procedure was strikingly like that of modern arbitration.[9] Again, the Greeks, being a seafaring people, early developed a body of maritime law, the first state to do so being Rhodes, the leading naval power of the Ægean in the third century B.C. This code, called the Laws of the Rhodians, bequeathed some of its rules to modern maritime law through the Consolato del Mare, the famous maritime code of the Middle Ages.

Two characteristics of the Greek interstate legal system are to be noted: First, that it was inspired largely by religious motives rather than by any abstract conception of interstate political relations or obligations; and second, that it was confined severely to the Greek world. No sense of legal duty or obligation, as between Greek and Barbarian, entered into it. The system was Greek, not broadly international.

Nevertheless, Greek civilization bequeathed to posterity the great conception of legal rules, voluntarily entered into by independent states and binding upon them. Indeed, the lesson to be learned from Greece is more fundamental than this; for the Greek political experiment demonstrated, not only that independent states may develop a system of interstate law and organization, but that they must do so if they are to perpetuate their political life; for it was the tragedy of the Greek régime that its failure to create what Professor Potter has called a science of international relations proved its undoing.[10]

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[7] L. Oppenheim, *The League of Nations and its Problems* (1919), 7.

[8] T. A. Walker, *History of the Law of Nations* (1899), 37 ff.; C. Phillipson, *The International Law and Custom of Ancient Greece and Rome* (1911), Vol. I, Ch. II.

[9] See Ch. XVII.

Roman Contributions

The Roman régime was unfavorable to the development of international law; a world empire and a true international legal system cannot coexist. The very supremacy of Roman law negatived the concept of an international law binding upon independent states. However, it is not to be inferred that Roman civilization, which brought into existence the greatest system of private jurisprudence the world has ever seen, contributed nothing to modern international law. On the contrary, its influence upon the evolution of the present system of international jurisprudence has been profound. A brief reference to it must suffice.

In the first place, Rome, in her relations with her subject peoples, and especially in the prosecution of her wars of conquest, developed a limited set of rules analogous to those of modern international law. For example, the declaration of a state of war as between the Roman state and a foreign people, and the ratification of treaties of peace, were attended by certain formalities prescribed by Roman law. These formalities, which had their origin partly in religious scruples and partly in the passion of the Roman mind for legal precepts, were highly ceremonial; they were presided over by a body of priests known as the College of Fetiales, and were called the *Jus Fetiale.* It was characteristic of Rome, also, to define in legal terms the just causes of war.[11]

Again, Roman lawyers and magistrates developed what was called the *Jus Gentium,* a term which was later translated as "Law of Nations." It was not, however, international law in the modern sense; it could not have been such because the modern conception of the state did not exist. It was rather a code of Roman municipal law, called *Jus Gentium* because it was conceived of as a body of law common to all mankind. Its origin was somewhat analogous to that of modern private international law, in that it arose out of the necessity of applying the oftentimes conflicting rules of different systems of law to the determination of private controversies. As Rome be-

[10] See Walker, *op. cit.,* 37–38; Hershey, *op. cit.,* 41 ff.

[11] For statement of these rules see Hershey, *op. cit.,* 49, note.

came a great cosmopolitan city, it happened that non-Roman litigants constantly appeared before Roman courts presided over by a magistrate known as the *Prætor Peregrinus*.[12] To do justice in such cases, which might arise either between Romans and foreigners in Rome and Italy, or between foreigners, it became necessary for the Prætor to reconcile the conflicting rules of the different countries represented by the litigants. These cases involved such matters as contracts, partnerships, loans of money, and the like. Thus in course of time a code of laws was built up embracing such rules as the Prætors found to be more or less common to the constituent parts of the empire, and this was called the *Jus Gentium*. It was not international law, both because it was not a law between nations and because it dealt with private rights.

Yet it had a profound influence upon the rise of modern international law. Being a codification of rules common among separated peoples, it possessed a certain attribute of universality, and thus it came to be identified in political thought with what Roman and medieval thinkers termed the law of nature. In this form it exerted a powerful influence upon the legal conceptions of the Middle Ages; indeed, some of its rules entered directly into the body of modern international law.[13]

Medieval Influences

The fall of the Western Roman Empire was followed by the so-called Middle Ages, extending roughly from the fifth to the sixteenth century — a millennium in which international law made tardy progress. It was the age of feudalism; and while feudalism made one important contribution to modern international law — the concept of territorial jurisdiction — in the main it was a politically disintegrating institution, splitting society into warring groups which recognized no political superior, no common political obligations.

Nevertheless, the Middle Ages were to a very material degree the seed-bed of modern international law. Among the chief influences in preparing the way for its rise were:

(1) The renewed study of the Roman law by the civilians and the canonists. The former in their commentaries on the great Roman Code touched upon many questions of the international law to be; the latter dealt, from the moral and ecclesiastical point of view, with questions concerning the future international law of war.

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[12] A magistrate who decided causes to which foreign residents were parties.

[13] On the influence of Rome on the development of international law, see Walker, *op. cit.*, 43 ff.

(2) The revival of commerce and the appearance of maritime codes. From the eighth century on international trade, which had largely disappeared in the turbulent period after the fall of Rome, began slowly to develop again. Sea trade especially flourished, fostering the growth of maritime rules and customs which were collected into codes and gained some measure of international recognition.[14] To safeguard commerce among their members, leagues of trading cities were organized, the most important of them being the celebrated Hanseatic League, which lasted for two centuries, 1250 to 1450. These leagues stipulated for arbitration of controversies between their member towns, acquired trading privileges in foreign countries, and even waged war when necessary for the protection of their interests. This renewed commercial activity had two results of fundamental importance — the opening up of communication by sea with the Far East and the discovery of America.

(3) Feudalism, which, as already stated, emphasized the idea of territorial rights, and thus laid the foundation for the modern doctrine of territorial sovereignty.

(4) The Crusades (1096–1291), which operated powerfully to "stimulate trade and the interchange of ideas, arouse a keener sense of common interests, and awaken a deeper consciousness of the unity of Christendom."[15]

(5) The Medieval Church, which had incalculable influence upon the civilization of Western Europe during the Middle Ages.[16]

(6) The growing custom during the latter part of this period of sending and receiving permanent diplomatic representatives. First developed among the Italian Republics, it became universal by the end of the fifteenth century. This custom afforded an uninterrupted opportunity for the consideration of common international interests; it also developed rules governing the status of ambassadors in foreign countries which have come down to the present day. So, also, of even earlier origin, was the establishment of consulates for the protection and promotion of commerce. These consular officials,

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[14] Among them were the so-called Laws of Oleron, which governed the sea traffic of the Atlantic coast of Western Europe, dating from the twelfth century; the Consolato del Mare, a private collection of the fifteenth century, which regulated the commerce of the Mediterranean; the Amalfitan Tables, the maritime law of the Italian city of Amalfi, dating from the tenth or eleventh century; and the Laws of Wisby, of later date, for the North Sea and the Baltic.

[15] Hershey, *op. cit.*, 55.

[16] On the unifying influences of the Church, see David Jayne Hill, *World Organization and the Modern State* (1911), 78.

especially in Oriental countries, represented the interests of the seamen and merchants of their home cities under treaties called capitulations, exercising both civil and criminal jurisdiction over their nationals in these countries.[17]

Grotius and His Forerunners

As the European world moved towards the seventeenth century, the need of a law of nations became increasingly apparent. The age of absolutism was at hand; the doctrine of state sovereignty was exalted into a concept of absolute and uncontrolled power; diplomacy was incredibly Machiavellian. "All over Europe rulers, emancipated from former restraints and flushed with a new sense of unlimited power, eagerly accepted the political philosophy which taught that cool calculation and enlightened self-interest were the only guides in matters of state policy."[18] The wars of this period, says the same writer, were "infamous orgies of cruelty, lust and destruction," culminating in the bloody Thirty Years' War.

The new world of states then emerging was a lawless world; sovereignty uncontrolled was but another name for anarchy. Small wonder that the old Roman ideal of the common superior appealed to the imaginations of men, and that Utopian schemes for the establishment of universal peace made their appearance from time to time. At length the world, sated with horrors, "was disposed to listen when a few isolated thinkers ventured to assert that there were ethical rules applicable to the intercourse of states, though no earthly authority had power to enforce obedience to their commands."[19]

These thinkers were the forerunners of Grotius. They appeared here and there for some three centuries before Grotius, arguing that war was subject to law; that there should be a *jus gentium,* or international law, established by common consent; and that there must be a society of states and a law for it based upon natural reason and general custom.[20]

Finally, Hugo Grotius (1583–1645), the great Dutch jurist, gathered these fugitive principles into a system, his famous treatise,

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[17] For a good account of the origin and development of the consular system see Pitman B. Potter, *Introduction to the Study of International Organization* (1st Ed., 1922), Ch. V. Survivals of this early jurisdiction are still found in certain Oriental countries. On international law in the Middle Ages see Walker, *op. cit.,* 79 ff.

[18] Lawrence, *op. cit.,* 24.

[19] *Ibid.*

[20] Hill, *op. cit.,* 81 ff.; see also Hershey, *op. cit.,* 65 ff., on the forerunners of Grotius.

De Jure Belli et Pacis, appearing in 1625.[21] The system therein embodied embraced two elements, the positive law, or that law which derives its validity from the consent of nations, and natural law, a body of rules and precepts conceived of as antedating the establishment of society, by virtue of which every act is inherently right or wrong.[22]

Appearing in the midst of the Thirty Years' War, this work of Grotius had an immediate and universal influence. His vast learning gave his system the sanction of authority; his recognition of positive law as one of its corner stones placed it upon a substantial basis of reality; while his emphasis upon the law of nature made powerful appeal to ethical and religious sentiments. Moreover, the work of Grotius appeared almost contemporaneously with the formal recognition of the European state system in the Peace of Westphalia, and thus became a roughly formulated body of law for a definitely established society of states.

Grotius was succeeded by a long line of writers, some stressing the natural law element of his system — the so-called pure law of nature school; others emphasizing the element of positive law in the form of existing customs and treaties — the positivist school; still others building their systems equally upon the law of nature and the voluntary law of nations — the eclectics.[23] These writers had immense influence upon the development of the system outlined by Grotius; indeed, it is hardly too much to say that even down to our own day international law owes quite as much to the labors of publicists, by way of unofficial research and exposition, as to the official activities of governments.

Seventeenth and Eighteenth Century Developments

For convenience of summary the period since Grotius may be divided into three epochs, each approximately a century long, with a fourth just dawning. The first, extending to the Peace of Utrecht (1713), was characterized by several developments of importance to international law: The conception of the European Balance of Power as a guarantee of the independence of states; the historic controversy over the freedom of the seas; [24] the general recognition of the so-called right of legation, evidencing the firm establishment of the diplomatic system; discussion of the principle of intervention and the rules governing neutral trade; and the growth of commercial intercourse, evidenced by numerous treaties of commerce.

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[21] It has been said that this book has been second only to the Bible in its influence upon civilization.

[22] On Natural Law, see Sir Henry Maine, *Ancient Law* (4th Am. Ed.), Ch. IV; Lawrence, *op. cit.,* 29 ff.; J. L. Brierly, *The Law of Nations* (1928), Ch. I, Sec. 2.

[23] On the modern aspects of these so-called schools of international law, see J. W. Garner, *Recent Developments in International Law* (1925), 13 ff.

The second epoch, from the Peace of Utrecht to the Congress of Vienna (1815), witnessed the growing influence of the New World upon Old World policies — in the rise of questions concerning colonization, the fisheries, rights incident to occupation, and the like. The balance of power principle was repeatedly affirmed and as often violated. International morality was at low ebb; treaties were openly subordinated to the dictates of self-interest, and wars waged on slight pretexts.

Among the specific events of this period having a formative influence upon international law was the entry of the United States into the family of nations, and its early promulgation of certain principles of neutral right and duty which profoundly modified the law of neutrality. Of similar import were the so-called "Rules of the Armed Neutrality," promulgated in 1780, by a group of powers headed by Russia, and reaffirmed in 1800, which embodied certain important rules of maritime law, and constituted an epoch in the development of the law of neutral rights on the high seas. The Napoleonic wars, at the close of this period, in so far as they resolved themselves into a struggle for mastery of the seas, raised important questions of neutral maritime rights, some of which have not been definitely settled to this day.

> The period from 1713 to 1815 had tested the general principles propounded during the seventeenth century, and it was found necessary to expand their interpretation, while the growth of commerce and intercourse made necessary new laws of neutrality and new principles of comity. . . . By the year 1815 the theory of the seventeenth century had been severely tested by the practice of the eighteenth century, and it remained for the nineteenth century to profit by the two centuries of modern political experience.[25]

From Vienna to Versailles

The third epoch began with a peace conference, the Congress of Vienna, and ended with another and still greater peace conference, that of Versailles, of 1919. Throughout the intervening century may be traced the developments in international law ushered in by the earlier conference and culminating in the great peace conferences at the Hague near the end of the period. Space forbids anything like a detailed study of this period — by far the most important in the history of international law; the briefest reference to its outstanding characteristics must suffice.[26]

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[24] Between Grotius, who argued for the principle, and Selden, the Englishman, who wrote his "Mare Clausum," or closed sea.

[25] G. G. Wilson and G. F. Tucker, *International Law* (7th Ed., 1917), 22.

In the first place, it saw the beginnings of true international legislation. The Congress of Vienna was the first of the so-called international law-making conferences held from time to time throughout the ensuing century, the greatest of which were the Hague Conferences of 1899 and 1907. It declared for the free navigation of international rivers [27] and for the abolition of the slave trade, and classified diplomatic agents. Its legislative work was secondary to its political, as was that of the Congress of Paris of 1856, which laid down certain rules concerning neutral maritime rights.

But since the mid-nineteenth century, there have been an increasing number of conferences of a definitely legislative character, called not in time of war to make a peace, with legislation as a by-product, so to speak, but in time of peace to formulate rules for the regulation of future wars or to deal with matters not connected with war.[28]

In the second place, the period under consideration, particularly the latter half of it, was characterized by the multiplication of agencies of international coöperation, both official and unofficial. An increasing number of conferences were held to promote innumerable interests, public as well as private, and a large number of international administrative unions and bureaus were set up to deal with a variety of public matters of common concern.[29] Irrespective of the specific achievements of these coöperative movements, they have given internationalism immense impetus, thus paving the way for the League of Nations and its allied institutions.

In the third place, this epoch saw the rise of the Concert of Europe,[30] beginning in the so-called Holy Alliance and exerting a dominating influence upon the international politics of Europe throughout the larger part of the nineteenth century. It influenced international government and politics rather than international law in any technical sense; nevertheless, it was the germ of the internationalism which culminated in the institutions set up at Versailles, and thus its influence upon international law proper, though indirect, has been profound.

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[26] They are referred to in various connections throughout this book.

[27] That is, rivers navigable from the open sea and running through the territories of different states.

[28] This point is further discussed in Chs. XIV, XV, and XXII.

[29] See Ch. XIII.

[30] See Ch. XII, Sub. II.

Finally, international law was developed throughout the century by the growing practice of international arbitration and other peaceful methods of settling international disputes involving legal questions. In these judicial proceedings the rules of international law have been studied and interpreted by learned jurists, and given practical application in adjudicated cases. Thus the rules of the customary law of nations have been expounded; at the same time their inadequacies have been brought to light and their need of clarification and expansion made more apparent. With the establishment of a true court of justice this formative influence will become more fruitful, but it has been by no means of negligible value as an incident of arbitration.

Law-making Since the Peace Conference

The Paris Peace Conference of 1919 inaugurated a new era in the development of international law — dealt with in detail in Part VIII of this work. Its salient features, briefly stated, are: (1) The assurance of periodical conferences to deal with matters involving, directly or indirectly, questions of international law; (2) the working out, through the permanent agencies of the League of Nations, of a better technique in handling problems of a character requiring legislative treatment; (3) a movement to codify international law topic by topic — codification being taken to mean, not merely the systematic statement of existing rules, but their modification and amplification to render them better suited to existing international conditions.

The greatly improved legislative methods inaugurated by the League of Nations through its frequent conferences and its utilization of expert service, responding to the increasing need of supplementing the rules of the common law of nations in many important fields, have resulted in unprecedented legislative activity in the decade since the World War. Never in the same length of time have so many multilateral conventions of a legislative character been adopted.[31] Indeed, this contemporary epoch bids fair to be characterized in the history of international relations as the legislative era.

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[31] Some of these conventions are referred to in Ch. XXII.

III. Sources of International Law[32]

Strictly speaking, international law has but one ultimate source — the consent of the nations to be bound by it. In this respect it may be said that national and international government are alike, both systems deriving their just powers from the consent of the governed. Inasmuch as the right of assent implies that of dissent, it would follow, stating the principle negatively, that no nation is bound by a rule of international law to which it does not assent.

While these statements may be technically correct, they throw inadequate light upon the actual processes whereby international law comes into existence; indeed, unexplained they are misleading, for they fail to answer several pertinent questions: Is actual assent necessary to the validity of an international rule? How may assent be expressed? What about the status of a state deliberately refusing assent, if assent may be refused?

The Customary Law of Nations

In the first place, the assent technically necessary to bring a state under the obligation of international law need not be express; it may be implied from acquiescence. By far the larger part of the whole body of international law is what is known as customary law — that is, law derived from the long-continued practices of nations in their political intercourse. Thus a custom, by reason of its universality and its essentially regulative quality, hardens into law, quite independent of any formal legislative action. This major part of international law, sometimes called the common law of nations, is familiarly compared with the English common law, likewise customary in origin and still constituting the basis of municipal law both in England, where it originated, and in the United States, where it was adopted.

Thus assent to the customary law of nations need not be evidenced by any specific act or declaration. It is an accepted principle that a state, by reason of its membership in the community of states, is held to have acknowledged the validity of those rules recognized as binding by the general body of states. International law is recognized by the constitution of the United States as an existing body of law binding upon the new state, in the provision which empowers Congress " to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations "; moreover, the federal courts have uniformly held that international law is a part of the " law of the land." [33]

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[32] The international legislative function is discussed at length in Part V, particularly with reference to what is aptly termed international legislation in the stricter sense — that is, statutes brought into existence in the exercise of the treaty-making power.

Again, it does not follow, of course, that a state cannot deliberately refuse to be bound by a rule of international law, but if it were to do so it would be guilty of illegal conduct, and subject to such retaliatory action on the part of the injured state as international law justifies under the circumstances. In this respect its position would be analogous to that of the individual refusing obedience to a rule of municipal law, to the injury of another individual.[34]

Until the beginning of the nineteenth century, custom was the sole source of international law. Custom and usage as generators of law have their strength and their weakness. In brief, a law of customary origin is apt to be more effective than one established by mere legislative fiat, because the habit of obedience has become fixed in the very process of its creation; whereas a formally enacted law lacks the sanction of long-continued acquiescence. On the other hand, customary law is subject to two limitations: First, that it sometimes lacks precise definition — that is, resting on custom alone, there may be legitimate differences of opinion as to what the uniform custom has been and consequent disputes as to the rules applicable in specific cases; and second, and more particularly, it is of slow growth and therefore tends to lag behind the requirements of a rapidly developing society.

International Legislation

The former infirmity has in part prompted the movement for codification now under way; the latter accounts for the great lawmaking treaties of the past century. As to codification, later discussed, it is enough to remark here that it seeks to clarify the customary law by precise definition, so that statesmen and jurists, in determining what the law is, may be spared the labor and uncertainty incident to the discovery of rules originating in custom. Codification may also serve a strictly legislative purpose when it undertakes to supplement and complete the customary rules with which it is concerned.

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[33] *Constitution, Art. I, Sec. 8, Par. 10.* The United States Supreme Court has so held in many cases involving the rules of the customary law of nations, one of the most familiar being that of *The Paquete Habana* (1900), involving the question of the liability of fishing smacks to capture on the high seas.

[34] Potter, *op. cit.* (3rd Ed., 1928), 239, 240.

It may be noted that international practice is still a factor in the development of international law, despite the increasing importance of the rôle played by international legislation. The case of the *S. S. Wimbledon* has been cited in illustration of this point. There the Permanent Court of International Justice laid down a general principle relative to the status of inter-oceanic canals, based upon the precedents afforded by the international use of the Suez and Panama canals.[35]

As suggested above, customary law having failed to suffice for a highly organized system of states, it has latterly been supplemented by multilateral treaties, analogous to the enacted law of a state, regulating matters outside the body of the common law, or in some cases codifying parts of that law. Beginning with the Congress of Vienna in 1815, a series of these general legislative treaties has appeared, whereby the common law of nations has been clarified by partial codification, or supplemented by new rules. These legislative treaties, resting upon the express assent of nations, are among the most notable developments in modern international life.[36]

It is stated above that membership in the community of states carries with it implied acceptance of the customary law of nations. The question arises as to how far, if at all, a state not a party to one of these law-making treaties is nevertheless bound by it. Or, to put the question directly, when, if at all, does such a treaty, adopted by a number of states less than the whole, become part of the law of nations? This question is discussed later, the answer being, briefly, that when a treaty has been adopted by all the states of major political importance, the acquiescence of the lesser states, as a practical matter, may generally be taken for granted.[37]

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[35] In this case the question was whether, under the treaty of Versailles, the neutrality of Germany would be violated by the passage of a British steamship laden with munitions of war consigned to the Polish naval base at Danzig, Russia and Poland being at war. Under German neutrality orders this transit was forbidden. The court held that the canal had become an international waterway for all vessels belonging to nations at peace with Germany. Thus it appears that treaties may become a basis for the growth of customary law. On this point see Brierly, *op. cit.*, 129.

[36] See Chs. XV and XXII.

[37] For example, if the great naval powers should join in a treaty definitely outlawing the submarine as a weapon of naval warfare, the rule thus established would, it is safe to say, have the force of international law.

IV. EVIDENCES OF INTERNATIONAL LAW

Whenever in the intercourse of nations a legal issue arises — that is, a question as to the rule of law applicable to a hypothetical or actual state of facts — it becomes necessary for the governments concerned to determine the law governing the case in hand. The problem is ordinarily dealt with by the political departments of the respective governments — at least in the first instance. If they are unable to settle the point, the case may be submitted to arbitration, or to strict judicial determination now that an international court exists with jurisdiction over such questions.

As regards cases falling within the provisions of a law-making treaty, this inquiry would ordinarily involve one of two questions, or possibly both: That of deciding whether the treaty in question was in force between the two states, or that of interpreting its provisions. The former question might arise, for instance, on the claim of one state that it was not bound by the treaty because some third state had not become a party to it, or because the treaty had become obsolete; while that of interpretation is one incident to all written laws.

But a different situation is presented when the rule in issue is unwritten in the sense that it has never been formally enacted or agreed upon. Then the question is this: To what evidences shall the two governments, or the court, if it be a judicial proceeding, resort for proof of the customary rule of law applicable to the case?

These evidences are numerous, and of varying weight. They include: (1) The codes or declarations adopted by international congresses and conferences relating to particular legal subjects. Even though failing of adoption by the states represented, these acts are considered authoritative pronouncements on the subjects to which they relate.[38]

(2) Treaties which do not purport to lay down new rules of law, but rather to be declaratory of what the parties understand the existing law is, or should be. The evidentiary weight of such treaties depends considerably upon the number and character of the parties to them.[39]

(3) The decisions of international judicial tribunals such as Arbitration Courts, Prize Courts, International Commissions of Inquiry,

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[38] An example is the Naval Declaration of London, of 1908–1909.

[39] The Three Rules of the Treaty of Washington, of 1871, under which the famous Alabama Claims were arbitrated, illustrate this type of treaty.

the Hague Permanent Court of Arbitration, and the Permanent Court of International Justice. These decisions, in point of law, bind only the parties to the proceedings in which they are rendered; but as precedents they are of great importance, especially when rendered by eminent and learned jurists. The opinions and decisions of the Permanent Court of International Justice will be of the most authoritative character.

(4) Acts and declarations of a single state, such as its judicial decisions on questions of international law,[40] the opinions of its law officers, its diplomatic correspondence, proclamations of neutrality issued at the outbreak of a foreign war, instructions to its military, naval, diplomatic, and consular officers, and the like.

(5) The works of learned writers on international law, treating of its historical development and fundamental principles as evidenced by customs, treaties, judicial decisions, diplomatic negotiations, and state documents.

From all these sources light is thrown upon particular inquiries as to what the customary law is, as a matter of proving international usage. No state is bound by the judicial decisions of the courts of another state, or by its unilateral acts, though they may tend strongly to elucidate the law. The question always is, what has been the established rule of international conduct in cases like that under consideration?[41]

Evidences May Also Be Sources

It is to be observed that some of the evidences of international law mentioned above may also be sources thereof. By this is meant that the growth of custom and its crystallization into law may be materially promoted by the dissemination and study of treaties, judgments, and the like, which, strictly speaking, are only evidences of a preëxisting custom. Take, for example, the works of the great writers who have expounded the principles of international law, from Grotius down. Many of these writers were not content merely to elucidate existing customary law, but undertook to make some of its principles more humane and enlightened by discussing them from the ethical point of view. The result has been that statesmen, taking note of the reforms proposed, have gradually incorporated them into international practice, and thus modified preëxisting law.

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[40] The decisions of the English Prize Courts, and those of the United States Supreme Court dealing with questions of international law, are of this character.

[41] Hershey, *op. cit.*, 25 ff.

The same thing has been true of the decisions of courts, bilateral treaties, state papers, and other so-called evidences, as regards rules not unequivocally established by custom. Where, for example, each of two more or less conflicting rules finds some support in the precedents, the fact that an able court or statesman declares authoritatively for one or the other tends to establish it in later practice.

It is not to be assumed, however, that states in dealing with questions of international law, as they arise in practice, are commonly much concerned with ethics. For them the primary question is, not what the law ought to be but what it is. They do not ordinarily feel at liberty to ignore an established rule. Nevertheless, in certain situations governments may and do give weight to ethical considerations. If the controversy be one governed by no established rule of law; or if there be precedents for either of two rules applicable to the case, then arguments based upon moral grounds may be brought to bear in support of what appears to be the just and humane rule. In thus reinforcing doubtful legal positions jurists may in terms invoke the law of nature, but their appeal really is to principles of justice founded on reason and the nature of things, rather than to natural law in the earlier sense of the term.[42]

Thus throughout its history the development of international law has been profoundly influenced by the application of moral standards to its principles, both by writers in expounding the law in their systematic treatises, and by governments when dealing with cases to which no established rule of law decisively applied.

V. NATURE AND GENERAL CONTENT OF INTERNATIONAL LAW

Is the legal basis of international government law in any proper sense of the term? This question has been warmly debated by the theorists; it will suffice to indicate the two views advanced, the reasons supporting what appears to be the better one, and the bearing of the question upon international government.

John Austin, the English writer on jurisprudence, gave classic expression to the earlier view, in his *Lectures on Jurisprudence*, published in 1832. There he defined law, in brief, as being a command given to a political inferior by a political superior with power to enforce it by penalties for disobedience.[43]

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[42] Garner, *op. cit.*, 14.

[43] Someone has summed up this conception of law in the catch-phrase: "A code, a court and a cop."

International Law Not Within Austin's Definition

Obviously this definition of law could not, in any literal sense, embrace international law, and Austin explicitly denied to international law the essential qualities of law. The parties to international law being sovereign states, there could be neither a political superior nor political inferiors. So also, there was no international law-giving power in the Austinian sense — no authority capable of issuing decrees having the force of law; and finally, there was no international executive with coercive power.

Austin's definition gained wide acceptance on the part of succeeding theorists, but of late there has been a growing disposition to repudiate it as too narrow and technical. The opposing view is that, regardless of its sufficiency as a definition of municipal law, its exclusion of international law from the category of law was based upon a misconception of the essential nature of law, which presupposes, as a necessary element, neither a definitely located legislative power nor a specific law-enforcing authority. Enough that a regulative rule comes into existence somehow and is generally observed.

From this standpoint Austin seized upon one quality of municipal law — namely, its definite sanction or power of coercion, and magnified it unduly; whereas, its more essential characteristic is its regulative function. Any rule by which conduct is regulated is in this view entitled to be called law.[44] In excluding international law from the category of law Austin by no means repudiated it as a code of political conduct; he simply held that it was nothing more nor less than a system of rules having moral sanction — obligatory in the same sense as are the dictates of the moral law upon the individual. It must be admitted that in stressing the weakness of the sanction of international law Austin touched upon a problem which has confronted international government to this day: it is discussed later.[45]

International Law Now Deemed True Law

The less technical view of the nature of international law now very generally prevails. It is true law because in fact it regulates political conduct. To be sure, its sanctions are inadequate to ensure universal obedience — but so are those of municipal laws, which have all degrees of effectiveness, even that most fundamental of all civil laws, the law of the constitution, being oftentimes flagrantly violated. Moreover, in practice international law is universally regarded as true law, and violations of it are invariably referred to as breaches of legal duty. It is generally recognized as a part of municipal law, or the "law of the land," and enforced as such by state authority. Especially is this true in the United States and England.[46]

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[44] Lawrence, *op. cit.*, 8–9; A. J. Grant and others, *International Relations*, 1916, Part. IV, by J. D. I. Hughes. For list of authorities for and against the Austinian conception of international law, see Hershey, *op. cit.*, 18.

[45] In Ch. XII.

Finally, international government is gradually acquiring distinctive legislative and judicial organs. As will appear in Part VIII, international machinery of a quasi-legislative character has been set up, so that an increasing number of international laws have a definitely legislative origin. At the same time, a Permanent Court of International Justice has been established for the determination, on the basis of law, of justiciable questions within its jurisdiction.

Importance of the Question

Of what practical importance is the view to be taken of the essential character of international law? Some writers say that it has none; that the whole controversy is a mere logomachy — a war of words.[47] Without pressing the point into detail, it is submitted that international government is vitally interested in this question. It matters profoundly whether the international code is to be deemed law or etiquette; whether nations are to treat the obligations imposed by international law as binding because of their juristic quality, or as moral precepts having no fixed and universal validity. Indeed, the development of the international judicial function would be fatally hampered by the acceptance of a theory that denied the quality of law to the rules of international intercourse.

Happily, this controversy has been pretty effectually settled by the development of international government. In fact, that development has no more impressive evidence than the general acquiescence of states in the view that their intercourse is, and must more and more be, conducted on the basis of law in the fullest sense of that term.

General Content of International Law

To attempt even the briefest statement of the content of customary international law would be to transcend the limits of this study;

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[46] The Supreme Court of the United States has repeatedly so held; and in England a somewhat recent (1905) authoritative decision has apparently established the same rule there. On this point see Hershey, *op. cit.*, 11–14.

[47] Lawrence, *op. cit.*, 13.

enough for present purposes to indicate its general character. In spite of the considerable body of international legislation that has come into existence during the past century, the so-called common law of nations still forms the basis of modern international law. The bulk of its rules, particularly those dealing with peaceful international relations, remain uncodified, and can be discovered only by an inquiry into the practices of nations as evidenced in the various ways referred to above. The law of land warfare has been quite fully codified,[48] and in the process of formal statement has been to some extent modified and supplemented. No corresponding code of the law of naval warfare has been adopted, but certain parts of it have been given definite form.[49]

The common law of nations deals with the fundamental concepts of inter-state life. It defines the essential characteristics of the state — external sovereignty or independence, and equality; its recognition as an international person and the legal consequences thereof; its general territorial limits and jurisdiction on land and sea; the essential rights of the state, and its duties and responsibilities as regards other states and their nationals.

It prescribes the general rules regulating the intercourse of states through their diplomatic and consular services, and the formalities of treaty-making. It deals with international disputes, recognizing certain amicable methods of settling them, such as arbitration and mediation, and certain non-amicable modes of forcing an adjustment without resort to war; and it seeks to regulate the conduct of war if peaceful methods of settlement fail.

Finally, in the event of war, it recognizes the status of states not belligerents, and prescribes the rights and duties of these non-belligerent or neutral states — their rights as against the belligerents in the conduct of the war, and the duties and obligations incident to the maintenance and protection of their neutrality.[50]

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[48] Chiefly in the Conventions of the First and Second Hague Conferences.

[49] By the Second Hague Conference. For a full review of these conventions see Garner, *op. cit.,* 48 ff.

[50] See Ch. XIX, for reference to the law of neutrality as related to the problem of war.

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Part III

THE DIPLOMATIC INTERCOURSE OF STATES

CHAPTER IX

ORGANIZATION OF THE DIPLOMATIC SERVICE

I. Nature and General Functions of Diplomacy

States transact their international business chiefly through the diplomatic service maintained by their respective governments — this service including both the diplomatic officials abroad and the personnel of the home government engaged in diplomatic work. Until comparatively recent times the diplomatic service was the only permanent agency of political contact between nations. It has been the great achievement of the past century to bring into existence continuing bodies like the international bureaus and unions later discussed, and very recently, the League of Nations and the International Labor Organization, through which international relations in certain fields are maintained; but even these institutions, outside of the purely administrative realm, function largely in the diplomatic way — that is, their decisions are only tentative, requiring ratification by the several member states. So also in recent years, international congresses and conferences have played a highly important diplomatic rôle. Thus the diplomatic system of the world, embracing as it does both the machinery and the methods of international intercourse, is of the utmost importance to international government, and merits full consideration.

In ordinary usage diplomacy means the art of managing the intercourse of states, and adjusting their relations to one another by negotiation.[1] The most vital issues with which it deals arise out of conflicts of national policy, often of far-reaching importance and sometimes culminating in diplomatic crises threatening the peace of the world. Less spectacular, but bulking far larger in volume and of great importance, are the day-by-day matters arising in the routine intercourse of peoples. Within the field of international relations admittedly regulated by law, the task of diplomacy is less onerous. When disputes arise to which legal principles are applicable, the states concerned take diplomatic steps to reach an agreement upon the issues of fact involved, and upon the law applicable thereto. If this cannot be done through ordinary diplomatic channels, resort may be had to arbitration or judicial settlement, the disputed issues of fact being settled by this process, or by commissions of inquiry or some other fact-finding procedure.

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[1] Sir Ernest M. Satow, *A Guide to Diplomatic Practice* (2nd and Rev. Ed., 1922), Vol. I, p. 1, gives the following definition: " Diplomacy is the application of intelligence and tact to the conduct of official relations between the governments of independent states, extending sometimes also to their relations with vassal states."

While there is nothing in domestic government closely analogous to the international diplomatic function, and no official corresponding to the diplomatic agent, it is worth while to observe that, broadly speaking, the method of diplomacy — that is, the reaching of agreement by the reconciliation of conflicting interests through negotiation — is essentially that of domestic government. It is unnecessary to point out that all government is fundamentally based upon the principle of compromise; that through all the processes of government runs the necessity not only of reconciling governmental authority with individual liberty — the perennial problem of government — but also of keeping the peace between conflicting groups or classes. The latter function involves fundamentally the rôle of diplomacy, whether the class conflict be one between industrial groups directly, or between their legislative representatives.

So also, modern party government is essentially government by negotiation, especially under the multi-party systems of many modern states. Without legislative majorities ministries are powerless; and to build up a majority out of opposing groups is a diplomatic task pure and simple. Thus diplomacy is not in essence peculiar to international relations; it permeates all government, everywhere exhibiting its characteristic qualities of strength and weakness.

II. Historical Development of Diplomacy

While the diplomatic system as such is of comparatively modern origin, the diplomatic function is ancient, antedating by many centuries the rise of the modern state system. The Greeks and Romans sent and received envoys, according them personal inviolability while in the discharge of their duties and treating them with the highest respect. Under the feudal system ambassadors were the personal agents of princes rather than the representatives of states. Throughout the Middle Ages intercourse between peoples was scant, and the occasional negotiations incident thereto were carried on by envoys specially commissioned each to deal with some particular piece of business. With the Renaissance movement in commerce and learning came increasing intercourse between nations, and the need of a more regular and efficient system of diplomatic representation.

Hence the practice of maintaining permanent or resident embassies, a most important step in the development of diplomacy. It appears to have been adopted first in Italy, as between the leading Italian cities, and to have become firmly established there by the middle of the fifteenth century. Thence the practice spread to England, France, Germany, and Spain, so that during the sixteenth and seventeenth centuries a system of permanent embassies, with a formal code of diplomatic procedure, became an established institution in Europe. Thus to regularize and make continuous the diplomatic intercourse of states was a distinct advance in international practice, as well as a striking recognition of the growing intimacy of international relations.

Early modern diplomacy was notoriously petty on the ceremonial side, and hypocritical in its official practices. The history of the period, even as far down as the end of the nineteenth century in fact, is full of diplomatic intrigue and deception; indeed, the character of diplomacy in its formative period gave to the word "diplomatic" a significance which it has not lived down to this day. At first diplomatic agents were of one kind, usually called ambassadors, who were supposed to represent the person as well as the affairs of their sovereign. Later other types of diplomatic agents appeared — the envoy or envoy extraordinary, who represented the sovereign's affairs but not his person, the resident, ranking below the envoy, and the minister, whose exact relative rank appears to have been indeterminate.

Rank of Diplomatic Agents

In order to place the hierarchy of diplomatic agents on a treaty basis, so as to avoid silly squabbles over questions of precedence, and to settle differences between the large and the small states as to the rank of their respective diplomatic representatives, the Congress of Vienna, in 1815, adopted certain rules which, as supplemented by another Conference held in 1818, provided for four classes of public ministers, namely: (1) Ambassadors and Papal Legates or Nuncios; (2) Envoys, Ministers Plenipotentiary, and others accredited to sovereigns; (3) Ministers Resident accredited to sovereigns; and (4) Chargés d'Affaires accredited to Ministers for Foreign Affairs. It is unnecessary to point out the technical distinctions between these classes of public ministers; their functions differ in no essential respect; the classification, however, served a useful purpose in solving problems of etiquette on formal occasions.

The system thus established has come down to the present time virtually unchanged; the hierarchy of 1818 is essentially that of today. It is left to each nation to determine what grade of diplomatic agent it shall send to each of the other nations. Ordinarily the same grade is sent that is received; that is, if nation A receives an ambassador from nation B, it also sends an ambassador to nation B.[2] The public minister's authority to act as such is set forth in a document called a "letter of credence," issued to him by his government, which takes its name from the fact that it requests the receiving government to give "full credence" to what he shall say on behalf of his government. If charged with special negotiations he will be furnished with another document conferring full powers in respect thereto, and instructions to guide him in the conduct of his mission.

III. Diplomatic Obligations and Immunities

Diplomatic missions may be terminated in various ways, as by the expiration of the term fixed therefor, resignation of the minister, or a state of war between the two states. Two forms of termination — recall on demand of the government to which the minister is accredited, and dismissal by that government — deserve more than passing mention because they throw light upon the nature of the diplomatic function. It is of the utmost importance to the success of the diplomatic mission, and so to the promotion of friendly relations between the governments concerned, that the diplomatic agents of each should be acceptable to the other.[3] Lest this acceptability be jeopardized, it is an inflexible rule of diplomatic conduct that the minister must in no way interfere in the internal concerns of the country to which he is sent. To do so is to overstep the bounds of propriety, and to render the minister *persona non grata* to the government which has received him.

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[2] Inasmuch as the ambassador was originally held to represent the person and dignity of his sovereign, as well as his government, it was at first deemed by the United States inconsistent with its status as a republic to send ambassadors, and for over a century only agents of the second, third, and fourth classes were sent abroad. By an act of 1893, Congress provided that the representative of the United States to any foreign country should bear the same rank as the representative of that country to the United States. Under this law the United States sends, and receives, some thirteen ambassadors.

[3] So it has come to be a quite common practice for the sending government to sound the other as to the acceptability of a person named before making his appointment public. In this way the appointee and his government may be spared the possible embarrassment of his rejection after he has been fully accredited.

In the event of such undiplomatic conduct, or if for any other substantial reason the minister forfeits the confidence of the receiving government, or has rendered himself personally obnoxious thereto, it may request his recall. Such a request, strictly speaking, is addressed to the discretion of his government, but it is complied with almost as a matter of course — certainly if the continuance of friendly relations with the requesting government is desired.

A diplomatic situation even more unfortunate and disturbing for the governments concerned may arise. The conduct of a minister may be deemed by the government receiving him so grossly improper as to warrant a peremptory dismissal. Such a course could be justified only under very exceptional circumstances, as it would be considered an unfriendly act by the minister's government unless clearly warranted. Dismissal may take place when the relations between two governments are strained, sometimes as a prelude to war.

Diplomatic Immunities

To enable diplomatic agents to exercise their important functions at all times with independence and a sense of security, international law has long recognized certain privileges and immunities as pertaining to the diplomatic office. Originating anciently in the idea of the sacred character of the herald, these diplomatic privileges and immunities have been preserved because of their obvious utility. Immunity from restraint, injury, or interference extends to the family and suite as well as to the person of the minister, and applies in general to his residence and whatever else may be essential to the performance of his duties; it attends him from the time he enters the country until he leaves it, even in cases where diplomatic relations have been severed by his dismissal. This privileged status of the diplomatic agent — sometimes explained on the theory that the minister, while physically in the jurisdiction of the foreign country is legally under that of his own country,[4] is official, not personal; it attaches to his office in order that he may not be hampered in the performance of duties oftentimes delicate and critically important.

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[4] This theory or fiction is called exterritoriality. A. S. Hershey, *Essentials of International Public Law and Organization* (Rev. Ed., 1927), 402, note, cites authorities on the two views regarding its soundness.

His immunity extends both to the civil and the criminal jurisdiction of the country to which he is accredited. In general, with certain exceptions which need not be stated, he cannot be sued in any civil action, nor can his personal property be attached or seized for debts; [5] nor may he be arrested or punished for violations of the local law, or forced to testify as a witness in a criminal case. Further, the general rule is that he cannot waive this immunity without the consent of his government. But this does not mean that a minister can violate the local laws with impunity. He may be punished under the laws of his own country; the country of his official residence may request his recall, or in grave cases dismiss him; and under circumstances of extreme necessity he could be temporarily imprisoned or escorted to the frontier.[6] The public minister enjoys other privileges and immunities — such as certain immunities from taxation; the inviolability of his residence or hotel; the right to customary ceremonial honors and marks of respect; and if authorized by his home government, the right to perform certain civil functions, such, for example, as the registration of births, deaths, and marriages of citizens of his home state.

The privileges and immunities of the diplomatic agent have been extended by international agreement to certain other officials of an international character, such as the judges of the Permanent Court of Arbitration at the Hague, the Judges of the Permanent Court of International Justice, the representatives of the members of the League of Nations in the Assembly and Council, public officials of the League at Geneva, national delegates to official international congresses and conferences, and in general to all persons clothed with an international diplomatic or representative character.[7]

IV. THE CONSULAR SERVICE

Another branch of the foreign service, not diplomatic in character but of great importance in the intercourse of states, is the consular service universally maintained between states having commercial relations. The consular service, historically more ancient than the diplomatic, formerly exercised some diplomatic functions, but with the rise of modern diplomacy the consul lost his distinctively political importance. He deals largely with commercial matters, but his duties take a wide range, overlapping to some extent those of the diplomatic agent. Formerly the consul exercised judicial functions in cases involving the nationals of his country, and such is still the case in a few non-Christian countries, notably China.

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[5] It is unnecessary to say that occasions for such actions rarely arise. A government would not tolerate a minister abroad who failed to pay his landlord and grocer.

[6] The local laws fully protect the minister in the enjoyment of these immunities.

[7] Hershey, *op. cit.*, 412.

While the consul is a public official, and represents the appointing state in respect to its economic interests, one of his special functions being to oversee the execution of its commercial treaties with the receiving state, he also represents the commercial interests of its citizens. His reports to his government on trade conditions and opportunities in the country where he resides are of great value to those engaged in foreign commerce, or interested in the foreign investment field. The organization of the consular service of each state — the rank of its consular officers, assignments of districts or ports abroad, and the like — is regulated by the local law, not by international agreement.[8] In general consuls, while enjoying a large measure of immunity from local laws and jurisdiction, are not so fully exempt therefrom as are diplomatic agents. Without going into details, it is enough to say that their immunities, as regards their persons, property, consular offices, and official archives, are such as will enable them to exercise their functions properly — functions, be it said, less likely than those of the diplomat to assume at times critical importance.[9] Strictly speaking, no state is legally bound to send or receive consular agents, but practically the consular service is deemed an indispensable branch of the foreign service in every commercial country.

The Rogers Act

Under the so-called Rogers Act of 1924 the diplomatic and consular services of the United States were formally merged into the

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[8] The usual classification is: (1) Consuls-General with supervision or control over several consular districts or one large consular district; (2) Consuls for smaller districts or for designated ports or towns; (3) Vice-consuls with consular character; and (4) Consular agents with like character. Hershey, *op. cit.*, 417.

[9] These privileges and immunities differ materially as between the class called professional consuls, who devote their attention exclusively to consular business, and commercial consuls, so-called, who are permitted to engage in business in the country where they reside, being citizens either of that country or of the appointing state.

"Foreign Service of the United States." Appointments are no longer made to either service specifically, but rather to the Foreign Service; so that while the two services remain separate in point of function, officers may be transferred directly from one to the other. The act also provides for a Foreign Service School in the Department of State for the training of candidates for appointment to the Foreign Service.

It should be noted that in recent years officials called commercial attachés with offices in the embassy or legation have been added to the Foreign Service of the United States. They are representatives of the Department of Commerce, being appointed by, and required to report to, the Secretary of Commerce. Their function is to gather and report on commercial and economic information in aid of American commerce.[10]

V. DIPLOMATIC DUTIES — LEGAL BASES OF FOREIGN SERVICE

The functions of diplomatic representatives have been aptly described as those of observation, protection, and negotiation. They are expected to be the eyes and ears of their governments in the countries of their residence, one of their most important duties being to report on all local events and policies of which their governments should be informed — always scrupulously refraining from any interference in the domestic affairs of the countries receiving them. Their protective and miscellaneous duties, largely determined by the law of the home state, include among other things the protection of their fellow nationals against oppressive or unjust acts, the issue and visé of passports, and certain functions in extradition proceedings.[11] The importance of the diplomat's function as negotiator, in particular cases, depends much upon the relations between his own government and the state to which he is accredited. Under normal conditions it may not make onerous demands upon him; and again, the success or failure of his mission may depend upon his skill as a negotiator. In this capacity he is relieved somewhat, as elsewhere noted, by the facility with which he may keep in touch with his government, and by the growing practice of dealing with important subjects of treaty-making in international conferences.

[10] See T. H. Lay, *Foreign Service of the United States* (1925), 155, 202–203; also note 24, p. 203.

[11] That is, proceedings under treaty for the surrender by one government of a person accused of crime, on request of another government within whose jurisdiction the crime was committed.

The Law Regulating the Foreign Service

As to the legal bases of these two branches of the foreign service, they differ materially. The consular service rests chiefly upon bilateral treaties, usually called consular conventions, between the states concerned. To some extent, also, the rights and duties of consuls are fixed by international custom or usage, and by the laws and consular regulations of the appointing state. The consul can perform no functions without the assent of the state to which he is sent; and the exequatur, as the document is called whereby the receiving state officially recognizes him and guarantees to him the prerogatives and immunities pertaining to his office, may impose conditions upon the exercise of his functions.

The diplomatic service, on the contrary, is regulated chiefly by the customary law of nations. This branch of international law is one of the best examples of the way in which custom is transformed into legal rule. Moreover, it illustrates both the strength and the weakness of customary law — its strength, in that the precepts of the law of diplomacy, having ripened through long observance, are quite scrupulously observed in practice; and its weakness in that in some respects it fails to conform to the spirit of modern diplomacy. Diplomatic procedure still retains many evidences of its medieval origin, still smacks too much of circumlocution and sonorous courtesy to be in accord with modern business methods. No attempt has been made to establish uniform conventional rules for the consular service by multilateral treaties. Codification of the law of diplomacy has been considered by the Committee of Experts for the Progressive Codification of International Law set up by the League of Nations to propose subjects of international law deemed ripe for codification, but was not dealt with at the recent codification conference.[12]

Thus the diplomatic and consular systems of the world form a "web of bilateral bonds" which constitute avenues of continuous intercourse between nation and nation.[13] Their importance can hardly be overestimated, especially that of the diplomatic service, from the standpoint of international government. Not only does the diplomat exercise a potent unofficial influence as the accredited representative and spokesman of his government, but delicate and important interests fall within the scope of his official duties, the skillful performance of which steadily makes for mutual understanding and respect.

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[12] See Ch. XXII, Sub. III.

[13] Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), 108.

VI. Control of the Foreign Service

The diplomatic service proper simply does the field work of diplomacy, so to speak. It is directed for each government by its executive department, or rather by a specialized office in the executive department, the conduct of foreign relations being primarily an executive function. The organization and personnel of this office, which in the more important states differ only in details, are no practical concern of international government, being purely matters of local regulation; enough that some such agency exists in each state. It is not too much to say that this governmental department, which is ordinarily called the department of foreign affairs,[14] has come to be recognized as chief among the several ministries or offices into which the executive department of modern governments is divided — a striking witness to the growing importance of international relations.

Ordinarily the official at the head of this department is called the foreign minister, or minister for foreign affairs. In cabinet government the foreign minister is the mouthpiece of the ministry as a whole in respect to the foreign policies of the government, but is charged in the first instance with supervision of the details of diplomatic intercourse. In the United States the Secretary of State, appointed by the President, is generally recognized as the chief cabinet officer. Because the general conduct of the foreign relations of the government — or at least the initiative therein — is vested by the constitution in the President, the Secretary of State, as foreign minister and mouthpiece of the President, is and always has been less under the legal control of Congress, and more directly responsible to the President, than any other member of the cabinet. The Department of State is peculiarly the administrative agency of the President in the conduct of foreign relations. With the foreign service proper, made up of the diplomatic and consular branches, it forms a single system through which the President exercises his broad constitutional powers.

Apart from restrictions upon the power of the President in treaty-making, and the legislative check which Congress has in cases where the President is obliged to ask for appropriations or other legislative aid in carrying out the provisions of treaties, the President is given a pretty free hand in the control of foreign policy. Besides enjoying an independent initiative in treaty-making, he is empowered to appoint the diplomatic representatives of the government, subject to the right of the senate to refuse confirmation — a right seldom exercised; while his power to receive foreign diplomatic agents is subject to no restraints whatever.[15]

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[14] In the United States, the Department of State.

Diplomatic communications between governments customarily pass through their respective foreign ministers; not directly, however, in ordinary practice, but through the diplomatic representatives of the two governments. Sometimes, indeed, communications pass directly between foreign ministers; so also, in the United States, the President may personally take up questions of foreign policy with the ministers of other countries, the practice depending somewhat upon the nature of the business and the personality of the President.[16] But it would generally be considered a breach of diplomatic etiquette for one government to communicate with another save through the regular diplomatic channels; as for instance, for a foreign government to address a letter directly to the President of the United States instead of to the Secretary of State.[17]

VII. ORGANIZATION OF THE AMERICAN STATE DEPARTMENT

It will serve to illustrate the wide scope and complicated character of the foreign interests dealt with by modern governments, to outline the organization of the State Department of the United States.[18] Other governments, notably that of Great Britain, have correspondingly complicated machinery, differing, of course, with the special interests of each government. At the head of the State Department, as already noted, stands the Secretary of State, who because of his close official relations with the President occupies the foremost position in the cabinet.[19] His chief assistant is called the Under-Secretary of State. In the absence of the Secretary, or in case of his disability, the Under-Secretary becomes Acting Secretary of State. He has general direction of the work of the department, and of the foreign service, and is chairman of the Foreign Service Personnel Board, mentioned later.

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[15] The power to receive implies the power to refuse to receive. This function is most important, because it directly involves the right to recognize, or refuse to recognize, new governments and states. See Ch. IV, Sub. VI.

[16] Charles A. Beard, *American Government and Politics* (5th Ed., 1928), 324–325.

[17] For an occasion when this was done see Beard, *Ibid.*

[18] This outline is condensed from Lay's excellent treatise on *The Foreign Service of the United States,* cited above.

[19] By law he serves as President in case of the removal from office, death, resignation, or disability of both President and Vice-President.

Four Assistant Secretaries of State also share in the general management of the department. They perform duties relating to a variety of subjects, among them: Foreign commercial policy and commercial treaties, transportation and communication, passports, decisions in cases involving questions of citizenship, administrative details concerning international conferences and commissions and ceremonial matters, and direction of the consular service and all consular activities in connection with the work of the several bureaus and divisions of the department. They also act in an advisory capacity concerning matters of diplomatic procedure and general questions of international law and policy.

The chief legal adviser within the department is the Solicitor. He deals with questions of national and international law; handles claims of citizens of the United States against foreign governments, and of the citizens of foreign governments against the United States; has charge of matters pertaining to international extradition, the protection of the interests of American citizens abroad and the rights of aliens in the United States, international arbitrations, and the drafting and interpretation of treaties. A similar agency in the economic field is the office of Economic Adviser. It serves the department in an advisory capacity in connection with questions of general economic policy; drafts correspondence on matters concerning natural resources, finance, commercial treaties and tariffs, transportation, and communications.

Dealing with more specialized activities of the department are the following divisions: Passport Control, Publications, Political and Economic Information, Current Information, and Foreign Service Administration. For administrative purposes the department is organized in six grand geographical divisions, each having general supervision, under the secretaries, of diplomatic, consular, political, and economic relations within the area assigned to it. These divisions are: Far Eastern Affairs, Latin-American Affairs, Western European Affairs, Near Eastern Affairs, Mexican Affairs, and Eastern European Affairs. In the present organization of the department the Foreign Service Personnel Board occupies an important place. It prepares the efficiency records of the foreign service officers, and submits to the Secretary of State the names of such officers recommended for advancement in or separation from the service. It recommends to the Secretary of State the assignment of foreign service officers to the various posts, and their transfer from one branch of the service to the other.[20] Thus, says Lay, the departmental organization embraces geographical divisions, a legal establishment, an economic establishment, and various administrative bureaus or divisions, so inter-related as to secure "balanced judgments and dependable decisions." [21]

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[20] The government also maintains various other agencies in the foreign service, such as military and naval attachés, trade commissioners, agricultural agents, foreign representatives of the Public Health service, etc. See Lay, *op. cit.,* Ch. VI.

[21] See further on this subject: G. Hunt, "History of the Department of State," a series of articles in *A. J.,* Vols. I to VI; P. S. Mowrer, *Our Foreign Affairs* (1924), Part IV, Ch. 2.

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CHAPTER X

INTERNATIONAL CONFERENCES — DIPLOMATIC PROCEDURE

I. Conference Organization and Procedure

To deal with matters of extraordinary importance, nations resort to conferences of a diplomatic character. Such bodies may be convened to establish peace at the close of war; they are then called peace conferences, although technically they are held in time of war, as was the Versailles Conference of 1919. Formerly this was the exclusive function of general international conferences, but of late such gatherings have been summoned, in time of peace, to deliberate upon matters of general concern to the nations represented, thus acting in a quasi-legislative capacity.

Since the establishment of the modern state system a series of such conferences have been held, the earlier ones, as already suggested, being peace congresses called to make political readjustments following a war or cycle of wars.[1] The most conspicuous examples of congresses of this character prior to the late Versailles Conference are the great European Congress of Catholic and Protestant states which met at Münster and Osnabrück in 1644–1648, and the Congress of Vienna, of 1815. The former marked the close of the Thirty Years' War, its work taking the form of treaties which established the Peace of Westphalia. This Congress stands as a great landmark in the history of international relations, because it implicitly recognized the existence of a community of independent and legally equal states in Western Europe, and thus laid the foundation for the development of a law of nations and of the whole modern system of international government.

The Congress of Vienna established a new political order following the cycle of Napoleonic wars. In two respects the work of this Congress passed beyond the mere political details of the peace it established. It modified the existing state system by uniting Norway and Sweden, and by decreeing the union of Belgium and Holland in a single state called the Netherlands; it also reorganized and neutralized Switzerland. So, also, it promulgated some important principles of international law, thus being the first of the series of law-making conferences discussed in Chapter XV.

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[1] These earlier conferences were called "congresses," a designation formerly applied to the more formal and important of such gatherings. The more descriptive term "conference" is now generally used.

The latter half of the nineteenth century, and the twentieth, have been characterized by a remarkable number of conferences both public and private and dealing with an enormous variety of interests — political, social, economic, commercial, scientific, religious, and humanitarian. Of these the most important were the Hague Conferences of 1899 and 1907.[2] The significance of these conferences for international government is that the conference method of international action is no longer invoked solely or chiefly as a means of ending war, but has become the normal method of advancing the mutual interests of civilized nations. The importance they have already assumed, and the larger functions they are likely to perform as established agencies of international government, justifies a full discussion of their organization and modes of action.

Membership of Diplomatic Conferences

Several features of international conferences are worthy of note; and first, as to their membership. Peace conferences, so-called, embrace the belligerent nations as a matter of course, but not always all the belligerents. The last and greatest of these conferences, that of Versailles, did not include the vanquished nations. The victorious powers settled their own terms of peace, which the vanquished had no option, practically speaking, but to accept; in that respect the peace was a dictated, not a negotiated, peace. But the Versailles Conference also included a number of neutral states whose interests were directly involved in the peace adjustments. In fact, the tendency is to invite the representatives of such states to be present at conferences of this character, if not actually to participate — significant evidence that modern war cannot be restricted in its effects to the belligerents alone.[3]

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[2] These conferences are discussed in Chs. V and X.

[3] At the Versailles Conference twenty-seven different states were represented, besides the four British Dominions and India. Neutral states were allowed to participate in the discussion of matters which involved their special interests. In fact, the Conference went so far as to permit groups like the Jews and Armenians to present their claims. See A. S. Hershey, *Essentials of International Public Law and Organization* (Rev. Ed., 1928), 429, note; also *ante,* Ch. VII.

Representation in general conferences held in time of peace is determined by circumstances. To take three or four illustrations: The first Hague Conference of 1899 was made up of twenty-eight states, including those of major importance, and more particularly the European nations. The second Hague Conference of 1907 embraced, in addition to those invited to the first, the numerous group of South American states, swelling the membership to forty-four states. The Naval Conference of London, of 1908–1909, was restricted to ten states, those of chief maritime importance, because the conference was called to deal with the rules of maritime warfare. To the Washington Armaments Conference of 1921–1922, eight powers were invited by the United States, being those more directly concerned with the problems of the Pacific, and those materially interested in Far Eastern affairs.

Thus it appears that there is no established practice governing the make-up of international conferences. In the nature of things there cannot be; but the fact that each situation must be dealt with as it arises is an embarrassment in the calling of such conferences. The nation or nations taking the initiative must assume, in considerable measure, the responsibility of deciding as to membership, at the possible risk either of including discordant elements or of offending certain nations not invited. The state which calls the conference usually enjoys the privilege of proposing the agenda, or program of business. Russia did this for the two Hague Conferences, as did the United States for the Washington Arms Conference. But this does not mean that the initiating state has a free hand in determining what matters shall come before the conference. Other governments must be consulted, for states will not attend such conferences without knowing beforehand, and approving, the general subjects proposed for discussion. Of course no state can attend which has not been invited, or admitted at its own request. But it is usual to invite all states interested in the matters to be considered by the conference. The tendency seems to be to broaden more and more the representation at general conferences, so as to include the less important states. This tendency is well illustrated by the First and Second Hague Conferences, as already noted. The Assembly of the League of Nations is on the broadest possible representative basis, every member state being included therein. This growing inclusiveness of the international conference in point of membership, whether the business in hand be to restore or to promote peace, is evidence of the increasing solidarity of the world of nations.

Organization and Rules of Procedure

Second, each conference has power to determine its own form of organization and rules of procedure. In respect to representation, while each state may ordinarily send as many representatives as it pleases, the invariable rule is that it has but one vote. In the permanent conferences recently organized, like the Assembly of the League of Nations and the General Conferences of some of the international administrative unions, the number of representatives which a state may have is limited by the constitution of the body.[4] The regulations of the Peace Conference of Paris fixed the number of plenipotentiary or full power delegates for each of the powers represented,[5] but each delegation was allowed technical delegates, who had the privilege of being present at the sittings of the conference for the purpose of furnishing information which might be asked of them. The British delegation, including the technical delegates, numbered nearly two hundred, and the American Peace Commission was almost as large.[6]

International conferences are organized in a general way like national legislative bodies, with presiding officers, secretaries and committees, plenary sessions and committee meetings. A very large part of the work is done in committee, the plenary sessions being opportunities for discussion of the proposals brought in by the committees.[7] It is unnecessary to emphasize further what has already been said in some detail,[8] that the fundamental weakness of international conferences is the rule of practical unanimity and of voting equality, particularly the former. By practical unanimity is meant the agreement of nearly all the states represented, and certainly all the more important Powers. The sustained opposition of a Great Power is generally fatal to a measure; that of a lesser Power may be ignored, leaving it to protect its rights by refusing to sign the Final Act of the Conference, or by withdrawal. It may, of course, refuse to ratify any convention or treaty adopted by the Conference.[9]

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[4] In the Assembly each member may have not more than three representatives, *Covenant,* Art. III; in the Council each member is limited to a single representative, *Ibid.* Art. IV.

[5] Five for each of the Great Powers, and a smaller number for the other states, varying from three to one.

[6] Hershey, *op. cit.,* 429, note.

[7] The Paris Conference met in plenary session but six times prior to the meeting with the German delegates.

[8] In Ch. VII.

[9] Hershey, *op cit.,* 430 and note.

The states composing a majority of the conference in favor of a measure may choose to consider their vote binding upon them, regardless of the rule of unanimity. Until the procedure of international conferences shall be placed on a more workable suffrage basis, they will continue to fall short of the most satisfactory results.[10] Peace conferences exhibit other characteristic weaknesses. Their atmosphere is charged with the spirit of intrigue and selfishness; the effort too often is to seek temporary national advantage rather than the permanent common good. It is inevitable that they should reflect the passions of the conflict which they are seeking to end, and that the victors should be disposed to dictate hard terms to the vanquished. It is small wonder that the work of the peace conference is oftentimes but the prelude to another war.[11]

Third, international conferences are diplomatic in character, as already stated, having no power to bind the member states by final decisions, but only that of initiative or proposal.[12] They may, it is true, decide that a measure approved by them shall become effective when ratified by a certain number of states; or that states ratifying a measure shall be bound by it as to other states so ratifying, but no further. Such provisions, however, become part of the treaty or convention proposed, and derive their validity, not from the act of the conference but from that of ratification.

Recent Establishment of a Conference System

Fourth, these conferences are generally called only when occasion requires, and once they have finished their deliberations they pass out of existence, creating no permanent agencies to continue their work, or to promote the acceptance, by the states concerned, of what they actually accomplish. All such follow-up work has to be done by the regular diplomatic agencies, if done at all.

When the Second Hague Conference adopted a resolution recommending the assembling of a third International Peace Conference after a period corresponding to that which elapsed between the First and Second Conferences, and declared in favor of a preliminary committee to prepare the program of the third conference and to propose a mode of organization and procedure for it, it took a long step forward in international government. It is quite probable that the Hague Conference would have become a permanent institution had not the war intervened to prevent the holding of the third in 1915.

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[10] The League movement for progressive codification of international law embraced a proposal to deal with this important matter. See 20 *A. J.*, 747 (1926).

[11] Further on this general subject see Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), Ch. XII, on International Conferences. See also N. L. Hill, *The Public International Conference* (1929).

[12] To be sure, the treaty-making power of a state might be so organized that the state's representatives would have plenary power to bind it in the conference; but in modern governments ratification by some constitutional agency is generally necessary, at least as regards the more important treaties.

But the idea of continuity, of permanency, was embodied in the League of Nations and the International Labor Organization. Indeed, the provisions in the Covenant of the League for regular meetings of both Assembly and Council and for a permanent Secretariat, and in the peace treaties for annual meetings of the International Labor Conference and for a permanent Labor Office, unquestionably constitute one of the most valuable contributions ever made to international government.[13]

Results of Diplomatic Action — How Formulated

The results of diplomatic action, whether in general conference or personal negotiation, may take any one of several forms; as, for example, a treaty or convention in the proper sense; a declaration or statement of principles or policy agreed upon by the parties; a protocol, in the form of official minutes, or of an informal record stating the conclusions reached by the negotiators, or of the preliminary draft of an agreement later to be embodied in a more formal document; [14] or a Final Act, " the concluding agreement reached in an international conference where several treaties or conventions have been signed and which recites the circumstances and objects of the conference . . . and lists the results achieved in the form of separate conventions." [15] As between foreign offices or personal diplomats, the result may be the exchange of a series of notes or letters, which may assume great legal and historical importance as bearing upon the subjects discussed.[16] In point of subject matter international agreements range all the way from mere stipulations evidencing the routine adjustment of minor controversies to great lawmaking treaties.

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[13] On " Diplomacy by Conference " see R. B. Mowat, *A History of European Diplomacy,* 1914–1925 (1927), Ch. XXI.

[14] The term " protocol " is used in other senses. See Hershey, *op. cit.,* 432 and note.

[15] Potter, *op. cit.,* 132.

[16] See Sir Ernest M. Satow, *A Guide to Diplomatic Practice* (2nd and Rev. Ed., 1922), Vol. II, Chs. XXVII to XXX, for illustrative material on the various forms an international agreement or engagement may take.

II. FUNCTIONS OF THE REGULAR DIPLOMATIC SERVICE

To return to the work of the regular diplomatic service. It is not generally understood what an immense number of international disputes or differences are settled through ordinary diplomatic channels. The more important of these disputes may come to public attention; very many never do. They involve a wide variety of matters. A common type of claim is for pecuniary damages, presented either by aliens against a particular state, or by its citizens against foreign states. Such claims are advanced on numerous grounds — unjust imprisonment by the local authorities, mob violence, damage resulting from the operations of war, the acts of insurgent bodies in the foreign country, violations of neutral rights, etc.[17] Again, the dispute may arise out of some domestic policy alleged to be in violation of treaty rights, as for example, the Japanese school question in California, in 1906–1907, which raised questions under the treaty of 1894 between the United States and Japan, or the recent case of the "I'm Alone," under the treaty of 1924 between the United States and Great Britain to aid in the prevention of the smuggling of intoxicating liquors into the United States. Extradition treaties occasionally give rise to questions of interpretation, or of their application to specific cases.

Numberless cases of these various kinds are handled by the several foreign offices, and generally with success. The procedure in typical cases is simple, if not always expeditious. The foreign office presenting a case ascertains as best it can the facts involved, if they are in dispute, and communicates them by note to the other government, which in like manner submits its version of the matter in controversy. By an exchange of notes it is usually not difficult to reach agreement upon the essential facts of the case. It then becomes necessary to determine the rules of international law applicable to the facts so established. As a practical matter enlightened governments do not hesitate to admit liability in reasonably clear cases, and adjustment follows.[18]

Graver cases may arise, involving no disputed questions of fact but rather the legal validity of measures taken, or proposed, by one government affecting the other. Such cases necessitate a careful study of legal principles and precedents, and their presentation in diplomatic notes, which often assume great importance because of the skill and learning with which legal questions fundamentally affecting the relations between states are discussed.[19] Questions of this nature lend themselves readily to arbitral or judicial settlement if the parties are unable to effect an adjustment by diplomatic means.

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[17] See John Bassett Moore, *International Law Digest* (1906), Vol. VI, Ch. XXI, for the law and procedure relating to international claims.

[18] Moore, *op. cit.*, and the government publications covering the foreign relations of the United States, give the diplomatic history of cases to which the United States has been a party.

In all these cases enlightened governments usually address themselves to the task of agreement with good temper and mutual consideration. Indeed, they often do so at the very time when the sensational press and the chauvinistic politicians of their respective countries are doing their utmost to inflame public opinion by extreme and partisan statements of the case. This was well illustrated by the negotiations between the United States and Japan over the Japanese school question in California. While the matter was the subject of excited discussion in the press and at public meetings in both countries, it was dealt with by the two governments without "the slightest departure from perfect good temper, mutual confidence, and kindly consideration." [20]

Diplomacy by Conference — Good Offices — Mediation

The orthodox methods of diplomacy, wherein negotiations are carried on orally between the negotiators, or by an exchange of notes, or by more formal communications, have been modified to a considerable extent in recent years by the growing practice of resorting to conferences — diplomacy by conference, it is sometimes called. This method may be followed either in great international conferences, such as have become familiar since the World War, or in personal interviews between responsible ministers themselves — interestingly illustrated on such occasions as the meetings of the Assembly and Council of the League of Nations. This conference method has much in its favor. It is more open and candid, better adapted to solve the complicated problems which arise between modern nations, less tolerant of the pettiness and self-seeking which characterized the old diplomacy.[21]

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[19] The Great War raised several important issues of this character, among them being the submarine controversy between the United States and Germany, and the question of American Contraband trade between the United States and the belligerent Powers.

[20] Mr. Elihu Root, presidential address on the Japanese School Question before the Am. Soc. of Int. Law, *Proc. for 1907*, 43, at p. 47.

[21] See below, Sub. III, on The Conference as an Agency of International Government.

Diplomatic negotiation is a valuable means of settling international disputes, and an indispensable agency in the everyday, non-contentious intercourse of nations. In spite of the increasing practice of resorting to international conferences for the interchange of views, personal diplomacy of the old type is still the main channel of communication between states, and doubtless will continue to be for some time to come.[22] Increasing resort to arbitration and other pacific methods of settling international disputes will not lessen the real importance of diplomacy; they are rather the outcome of diplomacy — the successful culmination of diplomatic negotiations. While they mark the failure of the diplomats themselves to achieve definite results, they also evidence the success of diplomacy in invoking substitutes for force. Accordingly it is of great importance that the diplomatic function, and the agencies for its exercise, be popularly understood, and that the diplomatic services of the nations be organized and manned as efficiently as possible.

Apart from the diplomatic management of its own relations with other states, a state may, through diplomatic channels, seek to be instrumental in effecting a reconciliation, by means of negotiation or other pacific measures, between two other nations in dispute. This is sometimes done by what is called a tender of good offices, that is, by proposing a conference between them, or offering to act as an intermediary in respect to any proposals looking to a settlement that either of them may see fit to make. If the proposal be favorably received, the third state may, by agreement of the disputants, actively undertake to work out a settlement of the dispute; or it may do so in the first instance, taking the dispute under consideration on its merits. The third state then becomes a mediator, and as such may take positive measures — always with the consent of the principals, to bring them to an adjustment.[23]

Personal Diplomacy still Indispensable

Before the appearance of the railroad, the steamship, the telegraph, and the cable, the public minister abroad was often obliged to assume grave responsibilities in critical situations, or in important negotiations; and he did so at the risk of incurring the displeasure of his government, or even of personal censure.[24] It is now possible for him to keep in hourly touch with his home government, so as to act from first to last under specific instructions. He ordinarily need assume no personal responsibility beyond that of keeping his government fully informed and acting upon its instructions tactfully and with fidelity. In view of these changed conditions, the question has been raised whether governments are any longer justified in maintaining permanent embassies abroad at heavy expense. Why not deal with each question as it arises through a special envoy, who would be a mere spokesman of his government?

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[22] A. L. Kennedy, *Old Diplomacy and New* (1923), 370–371.

[23] This procedure is described more at length in Ch. XVI.

[24] Early American diplomacy is full of illustrations of this need of bold, independent initiative on the part of the isolated diplomat.

This question is readily answered. It is true that important negotiations can be, and often are, conducted by specially accredited and instructed diplomatic agents, acting alone or in coöperation with the regular minister in the foreign country concerned; and this procedure can be resorted to more effectively than of old because of the rapidity of modern travel. To this extent the pressure upon the regular service may be relieved, and with good results. This expedient may be resorted to for one reason or another — perhaps because the negotiations involve technical matters requiring expert knowledge, or because the success of the negotiations seems to require diplomats having special knowledge of, or bearing peculiar relations to, the other country or countries involved, or quite possibly because the importance of the business in hand is such as to make it expedient to engage negotiators more able and experienced than those in the foreign service at the moment. But this hardly lessens the importance of the regular diplomatic service, either at critical times or under normal conditions. Crises arise and move towards disaster more quickly than of old, so that the need of instant action at the seat of the trouble is more insistent than ever. The need of highly trained diplomats in regular service to forestall misunderstandings, or to clear them up when they cannot be averted, by prompt and tactful action, has not been lessened but rather increased by the development of more rapid intercommunication.

Non-Political Influence of the Diplomat

But dealing with international crises is not, after all, the whole or even the main business of the regular diplomatic service. The public minister may exert a steady influence upon public opinion as regards the relations between his own country and that to which he is accredited; and this is perhaps his most important function. He is invaluable as a social force steadily making for understanding and good will, as well as for the service he may render at exceptional times. "He is not merely a diplomatic agent for a specific purpose; an attorney to attend to litigation; he is the representative of a whole people; he is their interpreter. The manner in which he speaks or acts for his countrymen will have profound results on the feelings of friendship and respect between the two nations."[25]

The growing practice of dealing with grave international situations in conferences has relieved the regular diplomatic service of some of its responsibility at such times; but the multiplying relationships and closer contacts between nations has increased its opportunity to exert a salutary influence upon international life. Thus, granted that the need of men of preëminent ability in the diplomatic service has been lessened by what may be termed the reportorial character of their technical functions, there is increasing need of a diplomatic personnel representing the best type of citizenship in the several countries. It may be true that the diplomatic service is less attractive to able men than it used to be because of the diminished personal rôle of the diplomat in originating or controlling policy, and that therefore they are less inclined to enter it; but on the whole the service has been strengthened by the change. The mistakes of men unequal to emergencies are less grave than formerly, and policy in the different countries is more consistent because less affected by the personality of the diplomat.[26]

III. The Conference as an Agency of International Government

The conference as an organ of international government is discussed in several connections throughout this study, particularly its organization and procedure as a medium of diplomatic intercourse and as an international legislative agency. Its importance in international government, however, is so immeasurable, actually and potentially, as to warrant special comment on its place, past and prospective, in international relations. The international conference is the most distinctive characteristic of the modern society of nations — the outstanding contribution of the past century to international organization. Its comparative novelty is apparent from the fact that prior to the Congress of Vienna, in 1815, the general international conference, held at rare intervals, was uniformly dedicated to the task of establishing peace after a war, and pretty strictly confined itself to that function. It made political readjustments, to be sure, by way of redrafting the map of Europe, but only such as were, or were deemed to be, directly or indirectly incident to the war. It did not resolve itself into an arena of debate upon such interests as the nations represented had in common; it conceived of war as a concern to be liquidated, not as an evil to be prevented.

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[25] Philip Marshall Brown, *International Society* (1923), 71.

[26] C. Delisle Burns, *International Politics* (1920), 125. See DeWitt C. Poole, *The Conduct of Foreign Relations under Modern Democratic Conditions* (1924), Ch. II, on the "Instrumentalities and Processes of Diplomacy."

Reasons for Tardy Development of the Conference

There are two main reasons why the international conference was not utilized earlier as the governmental agency it has latterly become. First, the physical fact that the bare time and effort involved in assembling the representatives of any considerable number of nations was almost prohibitive before the days of rapid transportation. For example, it was a matter of weeks of travel for the diplomats who attended the Congress of Vienna from the remoter capitals. The ponderous machinery of early diplomatic intercourse did not lend itself to general conferences, except on the most urgent occasions.

In the second place, the nations of the early modern period had no large fund of mutual interests demanding coöperative planning and agencies of common control. International relations were too meager, too sporadic, to suggest the advisability of taking common council for their regulation and betterment. All this was transformed with the advent of the new era; steam and electricity revolutionized international life. As regards the international conference, the virtual annihilation of distance was at once cause and effect; it not only made the conference physically possible, but at the same time it developed a maze of interrelationships imperatively demanding periodic consideration, and in due time permanent organs of control.

Conferences During the Past Century

Some idea has been given elsewhere of the extraordinary multiplication of international conferences, both official and unofficial, throughout the latter half of the nineteenth century, and thus far in the twentieth. The Great War suspended them for the moment, but at its close they were resumed in even greater numbers; they have become the commonplaces of international life. The importance of this nineteenth century movement can hardly be overstressed.

Apart from its immediate results, it accustomed national groups, and national governments, to coöperate for common ends; it disclosed a mutuality of international interest hitherto unsuspected; it laid the foundations of organized international government.

The nineteenth century conference movement culminated in the great Hague Peace Conference of 1899, perhaps the most significant international event of modern times; and the twentieth century was ushered in by the Second Hague Conference, even more completely international than its predecessor, and giving promise of developing into an established periodic gathering of the nations.[27]

The international conferences of the present century from 1907 down to the World War were too gravely darkened by the gathering shadows of the impending war to be fruitful of much good for international relations. Characteristic of their spirit was the Congress of Algeciras, of 1906, which dealt with the conflicting interests of France and Germany in Morocco; its success was but partial and temporary. The division of Europe into Alliance and Entente paralyzed the spirit of conference at precisely the time when it was most needed; indeed, it may be said that because no conference machinery existed war became inevitable. The lesson was not lost upon the world. Assurance of recurring conferences — frequent, regular, prearranged — was incorporated into the Peace Treaties, in setting up the International Labor Organization and the League of Nations. The former, through its annual general conferences, insures international consideration of problems affecting the world of labor; the latter is given deliberative jurisdiction over the whole field of international relations.

Conference Method of the League of Nations

It will appear in later discussions of the League of Nations and its work that the League method is preëminently the method of conference. The Assemblies are great annual World Conferences, whose functions really begin and end with debate upon international problems; while the more frequent meetings of the Council serve a similar consultive purpose. What the League does is to supply the need, so obvious before the War, of a conference system. The League Covenant took the conference out of the haphazard and caprice of international politics and gave it constitutional sanction. Whereas before the League, the possibility of meeting in international conferences diminished as the need of such conferences increased, under the League, conference action is automatically guaranteed by the crisis demanding it. Not only does the League ensure periodic conferences within its own organization; it has sponsored a series of conferences of outstanding importance in the decade since the World War. They are referred to in several connections. And finally, independent of the League, a number of great international conferences have been held since the World War.[28]

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[27] For a review of the work of these conferences and an estimate of their significance see J. W. Garner, *Recent Developments in International Law* (1925), 48 ff.

Non-Legislative Value of Conferences

In the popular mind an erroneous estimate is often placed upon the value of these conferences. It is natural to look solely to their tangible results, and to pronounce judgment upon them on that basis. This is a mistake. Their influence can never be measured alone in terms of the treaties and conventions they negotiate. Of equal or even greater value may be the spirit of good will they engender, the better understandings they promote. The Second Hague Conference, in its Final Act summing up the net results of its long deliberations, and referring especially to its failure to agree upon a convention providing for compulsory arbitration, went on record in the impressive declaration that "by working together here during the past four months, the collected Powers have not only learnt to understand one another and to draw closer together, but have succeeded in the course of this long collaboration in evolving a very lofty conception of the common welfare of humanity."

This was precisely in line with the prophetic words of Mr. Elihu Root, in referring to the good to flow from this conference:

> The greatest benefit of the Peace Conference of 1907 will be, as was that of the Peace Conference of 1899, in the fact of the conference itself; in its powerful influence moulding the characters of men; in the spectacle of all the great powers of the earth meeting in the name of peace, and exalting, as worthy of honor and desire, national self-control and considerate judgment and willingness to do justice.[29]

Thus the conference need not result in proposals of legislation to be worth while. As a matter of fact, it has been seen that in point of formal achievement it is seriously hampered by its methods of procedure — by the rule of voting equality, and especially by that of unanimity. It is not a parliament governed by majority, and at the most its work is only tentative, requiring favorable action by the governments represented — action often reluctantly accorded — to become effective. Moreover, to give promise of legislative success it must be held under favorable conditions and must deal with matters fairly within the range of common agreement on the part of the nations represented.[30] Thus, viewed merely as a piece of legislative machinery, the international conference leaves much to be desired. It lacks the requisite completeness and permanency of organization; it never speaks with decisive authority; it is at best a partial agent of the governments represented. Nevertheless, functioning as it does under all these handicaps, it has successfully initiated a considerable body of international legislation, and upon it rests the responsibility for such further legislation as will make the customary law of nations adequate to the needs of modern international society.

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[28] See further in Ch. XXII, on the post-war conferences.

[29] Address in opening the National Arbitration and Peace Congress in the City of New York, April 15, 1907, *Addresses on International Subjects* (1916), 129, at p. 144.

But hardly secondary to this legislative function of the conference is that of promoting a broader and more sympathetic outlook upon the problems of international government, and here it is not under the handicaps mentioned above. Reasonable men may differ, and differ sharply, on policy, and still cherish mutual respect and esteem. The give and take of debate discloses for each side the strength and sincerity of the other; and while neither side may yield, both will retire with a keener appreciation of the difficulties of the problem — the first and most necessary step towards a solution. When, as the Second Hague Conference remarked in its Final Act, " divergencies of opinion . . . have not exceeded the bounds of judicial controversy," discussion is not fruitless even though it reflects sharply divided opinion.

Apart from the influence of the conference upon its own membership, it serves to enlighten and liberalize the public opinion of the world. Conference debates are widely followed, and highly educative; but perhaps more potent still is the effect upon public sentiment of the bare fact that an international conference is deliberating upon a matter of international concern. Two aspects of the situation must be obvious to the popular mind: That a problem exists justifying international consideration, and that there must be some prospect of agreement upon a solution, else the governments would not make the attempt to agree.

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[30] Charles Evans Hughes, Presidential Address before the Am. Soc. of Int. Law, *Proc. for 1925*, 9.

The Conference Method of Dealing with Crises

Finally, the international conference goes to the very heart of the problem of war, whether in crises or as a steady influence for peace. The roundabout methods of traditional diplomacy are not adequate to deal with the war spirit when it is aroused; the exchange of diplomatic dispatches does not meet the situation. "Each party states its own point of view, and, instead of bringing the parties together, it too often hardens them in their convictions. You cannot have it out with a letter, you cannot argue with a dispatch, you cannot reason with a diplomatic message." [31] The tragic realities of the situation cannot be made clear in this fashion; it assumes the character of a diplomatic squabble, not the grim visage of impending disaster. Said the speaker quoted above: "If there had been a conference in 1914, in July, there would have been no catastrophe in August; it would have been impossible." [32] And so also, as an institution in normal times, steadily making for continued peace, the international conference undoubtedly has greater importance than is commonly attributed to it. "In removing the causes of great wars and in paving the way for freer, healthier, more secure and more cordial relations between the nations of the world," the international conference is destined to play an important if not a predominant part.[33] It is perhaps within bounds to assert that the periodic conferences of the League bodies will, in the long run, exert a weightier influence on the side of peace than either the conciliation functions of the Council of the League of Nations, or the Permanent Court of International Justice. All in all, the growth of what Lord Balfour has called the "conference habit" promises much for the future of international relations.

Proposed New Applications of the Conference Principle

Extensions and special applications of the conference principle are suggested from time to time. Thus Professor James T. Shotwell, of Columbia University, has lately proposed that the Kellogg Pact should be strengthened by the adoption of a policy of international consultation and coöperation in times of crisis, particularly with reference to the matter of determining the fact of "aggression" in particular cases — this to make up for the lack of any agencies to that end provided by the treaty. Thus outside the League of Nations, but in conformity with its aims and principles, a conference system could be developed to deal with critical international situations, in which both members and non-members of the League could participate.[34] Later Professor Shotwell proposed to expand the general functions of the conference essentially along the lines followed by the League, but giving it treaty-making power. Technical international questions would first be studied, from the scientific point of view and without regard to particular national policies, by competent bodies of experts, whose conclusions would be referred to international conferences called at periodic times to deal with definite limited problems. Thus the society of nations would avail itself of expert knowledge in the solution of its problems " in terms not of any nation, but in terms of the implications of the problem, in terms of the common interests of all concerned." [35]

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[31] David Lloyd George in address at Westminster Hall, London, January 21, 1922, *Int. Con.*, No. 171 (1922), 13.

[32] *Ibid.*, 12.

[33] F. N. Keen, *Towards International Justice* (1923), 68.

It is a safe prediction that the international conference will develop in the direction proposed by Professor Shotwell, even if it should not ultimately assume the character of an international parliament. One of the distinct services rendered by the League has been to demonstrate the importance of bringing competent, unbiassed, expert knowledge to bear upon international questions. Future conferences, whether sponsored by the League or not, will certainly look more and more to this powerful ally in their attack upon international problems.[36]

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[34] Address before the Woman's Forum in New York City, as reported in the *New York Times* for February 16, 1929.

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[36] For a list of the many meetings of the regular League organs and committees during the years 1920–1928 see Denys P. Myers, *Nine Years of the League of Nations, W. P. F. P.,* Vol. XII, No. I, pp. 215 ff.

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CHAPTER XI

THE OLD AND THE NEW DIPLOMACY

Traditionally, international diplomacy has been of evil repute. The system took form in what is called the Age of Absolutism in Europe, when there was almost complete absence of law or continuity in the intercourse of states. Even treaties were comparatively rare, and concluded only to deal with temporary emergencies. The political philosophy of Machiavelli was the perfect expression of the diplomatic spirit of the age, his theory that the end justified the means being an established maxim of diplomacy,[1] and Sir Henry Wotton's oft-quoted phrase, if taken literally, hardly a libel upon the diplomat: "An ambassador is one sent to lie abroad for the good of his country." Professor Marriott quotes Carlo Pasquali as saying: "I want the ambassador to shine by truth, the best assured of virtues. But I am not so boorishly exacting as to close entirely the lips of the envoy to officious lies."[2]

This unsavory reputation of its formative days diplomacy has never quite lived down. The Oxford Dictionary properly defines diplomacy as: "The management of international relations by negotiation"; but it proceeds to quote, as illustrating common usage of the term, the following passage from Gratian's *Beaten Paths:* "I can find no better significance for the word which typifies the pursuit than double-dealing. It is expressive of concealment if not of duplicity." This was a conservative judgment upon the character of diplomacy in the seventeenth century, as the history of the period amply attests. "In the eighteenth century," says Paul S. Reinsch, "diplomacy was still looked upon as a sharp game in which wits were matched, with a complete license as to the means pursued; provided, however, that embarrassing discovery must be avoided; in other words, that the exact method of deception must be kept so closely guarded that only the results will show." And the great diplomats of the nineteenth century, he adds, "continued to play a barren game of intrigue." [3]

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[1] For pertinent extracts from Machiavelli's *Prince,* see T. J. Lawrence, *Documents Illustrative of International Law* (1914), 1–5.

[2] "The Old Diplomacy and the New Democracy," *Edinburgh Review,* Vol. 241, p. 367 (1925). On this subject see also interesting comment by F. C. Hicks, *The New World Order* (1920), 214 ff.

No such strictures could justly be passed upon present-day diplomacy; but in point of external forms and method it is not altogether in tune with modern conditions. International intercourse has become very largely a matter of business administration, and yet the old diplomatic machinery has remained almost unchanged since the Congress of Vienna.[4] This is a matter of form rather than of substance, however, and impairs the usefulness of diplomacy, generally speaking, only in so far as it lessens public confidence in its proper adjustment to modern international life. The system is criticized, however, on three substantial and more or less related grounds: First, that its personnel is undemocratic and unrepresentative; second, that its processes and results are characterized by secrecy; and third, that it is not under popular control. It will be worth while to examine this indictment.

I. Criticism of Diplomacy — Its Personnel

As to personnel, the contention is that the diplomatic service is recruited from a class who have little in common with the plain people, whose training and social connections have inevitably given them an aristocratic and alien point of view, so that they do not feel a keen sense of responsibility to their peoples for the conduct of diplomacy, but consider it rather as a means of winning distinction upon a conspicuous stage. Thus, it is argued, they take a narrow and professional view of diplomacy, neglectful of the vast issues fundamentally involved.[5] Belonging to a peculiar caste of "superior" persons, they are unaccustomed to meet those who have to make their own living, and hence they do not, and cannot, take the democratic point of view.[6]

It may be said with some reason that the very training and experience necessary to equip the diplomat for his work — familiarity with diplomatic forms and etiquette, and refinement of manners — tend in a measure to weaken his grasp on fundamentals. He may readily, even unconsciously, come to evaluate formalism as an end instead of a means to an end, and so to fall out of step with the progress of international life. From this point of view diplomats have undoubtedly merited, in a measure, the popular distrust in which they have been held.[7]

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[3] *Secret Diplomacy,* Introduction (1922), 4–5.

[4] Eustace Percy, *The Responsibilities of the League* (no date), 200 ff.

[5] See on this point, J. A. Hobson, *Towards International Government* (1915), 67 ff.

[6] *International Affairs,* Norman Angell and others, article by C. Delisle Burns, 61. See also H. N. Brailsford, *The War of Steel and Gold* (3rd Ed., 1915), Ch. IV on "Class Diplomacy."

Whatever truth there may be in this count in the indictment, there are obvious reasons why diplomacy has tended to build up a sort of diplomatic caste. The office deals with international matters, for the intelligent handling of which men of special education and training are required. For this reason long tenures of office in this branch of the public service have been favored, so that men might adequately equip themselves for it as a career. Promotion from rank to rank is quite generally the rule in the service, the best qualified men finally reaching the most conspicuous positions. It is desirable, from the standpoint of efficiency, that the diplomat have as wide a foreign acquaintance as possible, and a training and personality that will enable him to broaden that acquaintance. These qualifications are not ordinarily found outside a comparatively narrow group. Moreover, the problems of diplomacy involve an international outlook which can be attained only by a wide range of study.

Thus there are reasons why the diplomatic service has been recruited so largely from a rather restricted circle; nor is it easy to see how this can be avoided. Popular election of such officials is nowhere resorted to, for the good reason that electorates could seldom form accurate judgments as to the qualifications of candidates for diplomatic positions; nor could popularly elected diplomatic agents be held sufficiently accountable to those charged with responsibility for foreign policy. And so long as the service is manned by executive appointment, the personnel will obviously be drawn from the group deemed qualified for the work by education, social connections, and practical training. It cannot be denied that the measure of success with which diplomacy solves its problems, especially the spirit and temper of the service, depends very considerably upon the quality of its personnel. Tact in the discharge of official duty; a sympathetic understanding of the people whose hospitality he enjoys, and a genuine desire to promote friendly relations with them; and above all, an appreciation of the new order in international politics — these qualities are an indispensable part of the equipment of the public minister.

But after all, the control of foreign policy lies with the government at home, not with the diplomats abroad. "Diplomatist," says Satow, should be understood as including "all the public servants employed in diplomatic affairs, whether serving at home in the department of foreign affairs, or abroad at embassies, legations, or diplomatic agencies." And "when we speak of the 'diplomacy' of a country as skilful or blundering, we do not mean the management of its international affairs by its agents residing abroad, but their direction by the statesman at the head of the department."[8] So that general denunciation of diplomacy is essentially a denunciation of the policy and practice of the government itself.[9] If a government is truly representative, its diplomacy will be; and whether or not it is representative depends upon whether any body of public opinion, intelligent and potent enough to guide the foreign policies of the government, really exists. So that the question at bottom is, not as to the personnel of the diplomatic service abroad, but whether the people really exercise intelligent control over their government in the matter of foreign policy.

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[7] Philip Marshall Brown, *International Society* (1923), 72–74.

II. Criticism of Diplomacy — Its Secrecy

The second ground of criticism, that of diplomatic secrecy, is weightier than the first; but like the first it involves, fundamentally, the broad question of popular control. In former days diplomacy was notoriously secret; it was preëminently that branch of the public service which was none of the people's business. Monarchs and foreign ministers met and conferred in secret, embodying the results of their dickering either in verbal understandings of which they were the sole custodians, or in mere memoranda which they likewise monopolized, or perhaps in formal documents which were lodged in the secret archives of the government. In no event were the people to be taken into their confidence.

Thus agreements vitally affecting not only their own countries but the peace of Europe were consummated behind closed doors and without the knowledge, not to mention the consent, of their peoples. Recent illustrations of this kind of diplomacy are not wanting. The troublesome secret treaties of the early period of the World War readily come to mind, although not fair examples of normal diplomatic procedure.[10] Reminiscent, also, of the traditional spirit of diplomacy is the quite general custom of governments of holding in abeyance diplomatic documents and correspondence until long after the period covered by the negotiations.[11]

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[8] *A Guide to Diplomatic Practice* (2nd and Rev. Ed., 1922), Vol. I, p. 4.

[9] Hicks, *op. cit.*, 213.

[10] On these treaties see Ray Stannard Baker, *Woodrow Wilson and World Settlement* (1923), Vol. I, Ch. II.

All the processes of the earlier diplomacy, even the pendency of negotiations on important subjects, were characterized by the same secrecy. Diplomacy was a business for barred doors and hushed voices. Students of American government will recall that until within recent years, executive sessions of the Senate dealing with treaties were invariably held behind closed doors. But the rise of democracy made this kind of diplomacy anomalous and absurd. To insist upon the widest publicity for all other transactions of a government, while permitting its political relations with the rest of the world to be shrouded in mystery, was too glaring an inconsistency to pass unchallenged, and a rising tide of disapproval has focussed public attention upon it. The secrecy which characterized European diplomacy during the half century or more before the World War was held largely responsible for that catastrophe. So that when President Wilson proclaimed, in the first of his Fourteen Points, "open covenants openly arrived at" as the guiding principle of the conference that was to end the war, he was hailed as the prophet of a new diplomatic era.

Meaning of Open Diplomacy

But just what is meant by "open" as opposed to "secret" diplomacy? There is confusion of thought on this point, induced somewhat, no doubt, by popular misinterpretation of President Wilson's declaration.[12] Open diplomacy may mean that the results of diplomatic negotiations, in the form of proposed treaties or conventions, should before becoming effective be subjected to public discussion and openly debated by representative bodies — that is, be passed upon by public opinion like other governmental measures. Or it may mean not only this, but further, that all the processes of negotiation should proceed under the public eye.

The first proposition is altogether sound; no valid reason can be urged for secrecy in the procedure for ratification. It is otherwise, however, with the process of negotiation. This distinction is important. Negotiation involves the attempt to bring governments to a tentative agreement on some subject as to which wide differences of view may prevail. It is often a delicate and complicated procedure; compromise and concession are necessary to enable the negotiators to reach common ground. It is essentially a process of give and take, in which each side may claim more than it expects to secure, in order to be able to make concessions in return for concessions.[13]

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[11] The last volume of the *Foreign Relations of the United States* is for the year 1917. To a certain extent this practice can be justified on the ground that if this diplomatic material were published contemporaneously, each volume would contain data relating to unfinished business.

[12] He explained his meaning as follows: "When I pronounced for open diplomacy I meant, not that there should be no private discussions of delicate matters, but that no secret agreements should be entered into, and that all international relations, when fixed, should be open, above-board and explicit." Baker, *op. cit.*, I, p. 137.

Now such proceedings cannot in the nature of things be public. Diplomats feel free to yield on points urged in private negotiations, but would fear lest they be denounced as faithless to their trust if it were publicly known that they had yielded. Negotiations would often be fatally hampered if every step taken were open to public scrutiny. Nor is this at all necessary to secure due publicity for treaty-making; enough if the treaty, when negotiated, is brought to the bar of public opinion in the process of ratification.

Nature of Diplomatic Negotiation

Criticism of diplomatic procedure on the ground that the diplomats fail to keep the public informed or to consult the representatives of the people, " neglects to take into consideration the fact that in foreign affairs one country is dealing with matters that do not concern itself alone. It frequently deals with secrets which it must share with other countries. A premature disclosure might result in the breaking off of negotiations altogether by another power. . . . Diplomatic negotiations, moreover, are frequently of a delicate nature, involving national predilections which cannot be overlooked. To attempt to discuss everything in public would often offend national pride, arouse international antagonisms, and render impossible the give-and-take so necessary to the successful conclusions of negotiations, for both sides have rights to guard and national points of view to realize."[14] "The objection to secret diplomacy," says H. A. L. Fisher, " is not lodged against the secrecy of the preliminary procedure but against the concealment of the final result."[15]

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[13] For a spirited presentation of this point of view see P. S. Mowrer, *Our Foreign Affairs* (1924), 222 ff.; also DeWitt C. Poole, *The Conduct of Foreign Relations under Modern Democratic Conditions* (1924), Ch. VI.

[14] S. P. Duggan, in E. A. Walsh (Ed.), *History and Nature of International Relations* (1922), 3.

[15] *An International Experiment* (1921), 32–33.

The negotiation of the Peace Treaties of 1919 illustrates this distinction. If President Wilson had meant by "open covenants openly arrived at" that the public should be admitted to all the inner deliberations of the Conference, he would have been proposing a rule that the Conference made no pretense of adopting — nor could it. Conclusions on major issues raised in the Conference were made public from time to time, and the treaties when completed were published to the world; but probably no great conference was ever more fully dominated by a small minority of its members, sitting in secret and apart from the other members, than was the Versailles Conference by the Great Powers; and this procedure could be defended on practical grounds.[16]

So that open diplomacy, as opposed to secret, fairly implies an adequate degree of publicity for international agreements once negotiated; it also implies the disposition on the part of governments to take the public into their confidence in advance, on large questions of international policy.[17] After all, the distinction between open and secret diplomacy is one of spirit quite as much as of formal procedure; and the spirit of diplomacy depends, in turn, largely upon the attitude of the people towards questions of foreign policy. Underhanded diplomatic methods will not be employed, nor secret agreements entered into, if foreign offices and diplomats understand that they will be held accountable to an alert and informed public opinion; so that here, too, the question at bottom is one of an effective popular control of foreign policy.

III. Criticism of Diplomacy — Lack of Popular Control

Thus current criticism of the diplomatic system, whatever specific direction it takes, comes finally to one fundamental problem, namely, that of fostering a genuine public opinion on questions of foreign policy, and holding the foreign service responsible thereto. This question of the control of foreign policy has been much discussed from the standpoint of governmental organization and method; [18]

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[16] See Ch. VII, Sub. II, on the Great Power principle.

[17] The negotiations between the United States and France, resulting in the Kellogg Pact, were an admirable illustration of open diplomacy from start to finish.

[18] Such questions as these are mooted: Should important issues of foreign policy be referred to direct vote of the people? Should the legislative branch participate in treaty-making as a check upon the executive? Should questions of foreign and domestic policy go through the same governmental channels, or be dealt with in different ways or by different agencies?

but it is becoming clear, taking a broad view of the matter, that it involves a more fundamental problem than that of mere constitutional mechanism. The basic question is, how can diplomacy become genuinely democratic, so that democracies shall control their foreign relations as well as their domestic policies? Something has been said on this question in other connections.[19]

Perhaps democracy is faced with no more serious problem than this, in view of the growing importance of foreign policy. Democracy is government by public opinion, and true public opinion presupposes more than a mere count of noses, more than mere acquiescence in governmental policy. It must be an active, watchful, intelligent force, possessing adequate means of expression and capable of giving direction to public policy. Now it is precisely in the field of diplomacy, and concerning the issues handled by diplomacy, that it is most difficult to create genuine public opinion, or to bring whatever public opinion may exist to bear upon government. Hitherto the ordinary voter has pretty steadfastly refused to interest himself in foreign affairs; diplomacy has been to him a sort of *terra incognita* — a realm of mystery into which the duly initiated alone might venture. Enough for him that the traditional policies of the government, as he vaguely understood them, be vigorously maintained; precisely what they were, or how best maintained in a highly organized world of competing, interrelated nations, were questions with which he did not seriously interest himself. The result has been very general popular indifference to international affairs, which in turn has been more or less reflected in the type of men placed in public office.[20]

Factors Handicapping Popular Control

From another point of view intelligent popular control of diplomacy is exceedingly difficult. When the voter is unable to judge of the merits of a specific policy from knowledge of the factors involved, he is inclined to apply the patriotic test to it, approving if it appears to gain something for his country, and opposing if it appears to concede something to the foreign country. That in the interdependent modern world of nations apparent gains may in the long run be losses, and concessions ultimate gains, is not so evident as the immediate results of a policy.

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[19] In Chs. III and XII.

[20] No captious criticism of the popular attitude is here implied. Students of international affairs well know the wide range of reading and study requisite to a general understanding of international relations.

Again, in diplomatic crises public opinion, even if it can be said to exist at all, almost wholly fails to function. So swiftly do events move that there is scant opportunity, even if there were the capacity, for intelligent deliberation, and no way of bringing rational public sentiment to bear upon the government, as a steadying, restraining force. The public attitude is quite apt to be chauvinistic, and subservient to the impulses of the moment. Indeed, governments may rely with absolute confidence upon the fidelity of the sentiment of patriotism. As a practical matter, the immediate control of foreign policy must be in the hands of the few who are so placed, and in command of such sources of information, as to be able to comprehend all the various aspects of international situations. Moreover, this directing group must obviously be found in the executive department of government. Legislative bodies come and go; they have, and can have, no agencies adequate to the task of dealing at first hand with international matters.

At any rate, the initiative in foreign policy must lie with the executive, and with initiative naturally goes guidance and supervision. Foreign relations cannot be conducted through mass meetings or legislative committees; indeed, it is difficult to see how this branch of the public service can be democratized by bringing it within the principle of direct government. As to policies which ultimately take form in treaties, representative bodies may have a final voice; but such policies probably form a less important part of foreign relations than is popularly supposed. The problem, then, is largely one of keeping a small executive group under vigilant popular scrutiny — of bringing to bear upon those immediately in control of foreign policy an informed, vigilant public opinion, to the end that their major decisions, like those of the law-making organs of government, may conform to the popular will.[21]

Not to pursue this subject further, it is clear that the basic condition of a better type of diplomacy is a more alert and intelligent public interest in foreign policy. As George Young points out: " It is fundamentally the fault of the public if the democratic principle has been so slow in permeating our diplomatic procedure." [22]

To the question as to how it has come about that the people of

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[21] On the difficulties incident to popular control of foreign policy see an illuminating discussion by James Bryce, *Lectures on International Relations at the Williamstown Institute of Politics* (1922), Lecture VI.

[22] *Diplomacy Old and New* (1921), 15. See also J. A. R. Marriott, " The Old Diplomacy and the New Democracy," *Edinburgh Review,* Vol. 241, p. 367 (1925).

Europe, even in democratic countries, have had no control over foreign policy, G. Lowes Dickinson replies that, while the answer would be different in different countries, "one fundamental fact applies generally. The people in no country have cared to know or control."[23] He denies that questions of foreign policy are difficult to understand, holding that they are simpler and more comprehensible than domestic questions. The difficulty with the former, he contends, is rather moral than intellectual, the hard thing being, not to see what would be the right thing but to get the right thing done where, on every side, there is suspicion, fear, jealousy, and bad will.[24]

IV. The New Diplomacy

Much has been written since the World War about what is called the "new diplomacy." The tone and methods of recent diplomacy have been compared with those of the "old diplomacy," the conclusion in the main being that diplomacy has entered upon a new and better era. Many evidences support this opinion. The old evils of secret diplomacy have been largely eliminated. While governments may, it is true, still keep diplomatic secrets from their people — may still have tacit, unformulated understandings of which the public knows little or nothing — they are less apt thus to sin against democracy when the means of publicity are so searching and comprehensive as they are today; when vigilant parliamentary minorities enjoy the privilege of putting uncomfortable questions to the government, and after the evils of secret diplomacy have been so tragically demonstrated.

The Covenant of the League of Nations, Article XVIII, provides:

> Every treaty or international engagement entered into hereafter by any member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

This provision, to be sure, has no application to unwritten agreements or understandings, but unquestionably informal compacts such as characterized the earlier diplomacy are less secure against disclosure than they used to be. Moreover, with the increasing web of treaties by which nations are bound together, it is more difficult than of old to avoid embarrassing conflicts between formal public treaties and secret understandings of the pre-war type.[25]

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[23] *The Choice Before Us* (1918), 243.

[24] *Ibid.*, 237 ff. For an extended discussion of public opinion in relation to foreign affairs, its formation and enforcement, see Poole, *op. cit.*, Part II.

So also, diplomatic etiquette is far less formal and petty than it used to be. No longer do diplomats quarrel over nice points of honor or silly questions of formal precedence. The day is fortunately past when, for example, two nations could be brought to the verge of war, or even into conflict, through the contentions of their diplomats at some foreign court.

Unquestionably diplomacy is in other respects far more worthy in its methods and spirit than it used to be — more candid and truthful, less given to trickery and double-dealing. No modern government would countenance the ethics of the old diplomacy; it would not be deemed good policy in the long run, even though it might temporarily succeed. "Another misconception as to diplomacy is that it is a profession of deceit."[26] On the contrary, adds the same writer, "a diplomat can have no greater asset than the belief among representatives of other nations that he tells the truth." Such an act as that of the falsification of the Ems telegram, by Bismarck in 1870, which virtually made war between Prussia and France inevitable, would not be countenanced by any responsible government today. "Intrigue, trickery, false-swearing, are not characteristic of the world that has come out of the European War, and are therefore not functions of diplomatic agents."[27]

Advantages of the Conference Method

To this end the development of what Earl Balfour called the "conference habit" has greatly contributed. Large questions of international policy are more commonly dealt with in multilateral conferences than ever before; and the organization and methods of these conferences are unfavorable to the personal intrigue and deception that characterized the old diplomacy. One other great advantage of the conference method of dealing with questions of general importance should be noted, namely, its value in expediting the exchange of views and increasing the probability of agreement. The cumbersomeness of the old method of separate exchanges between

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[25] There can be no absolute assurance that this provision is always complied with, but there is good reason to believe that it is. Treaties are published in what is called the "Treaty Series." Each treaty is printed in the language of each of the parties. If the language of neither is English or French, the official languages of the League, the treaty is also printed in both English and French translations.

[26] Richard Washburn Child, *A Diplomat Looks at Europe* (1925), 9, 10.

[27] Hicks, *op. cit.*, 215.

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members of a group, in critical situations, was tragically illustrated, as a recent writer has pointed out,[28] in the diplomatic situation that developed on the eve of the Great War. In the hectic days just preceding the outbreak of the War, the British foreign minister was in communication with the German, French, Russian, Austro-Hungarian, Italian, and Turkish Ambassadors, and the Belgian and Serbian ministers, and each of these diplomats with all the others. Thus there were no less than sixty-four channels of communication, and through each of them correspondence was carried on in three different ways varying in rapidity — interviews, dispatches, and telegrams. By way of comment he adds:

> So complicated and unbusiness-like a method of international intercourse is bound to enlarge the scope of the dispute, lead to confusion and misunderstanding, and produce embarrassing situations. Any ordinary business conducted on these lines would collapse in a week.[29]

Importance of the New Diplomacy

However, the main day-to-day field work of diplomacy must still be done by the network of diplomatic agencies scattered over the world, and the betterment of these agencies in technique and personnel would strengthen the diplomatic service as an instrument of peace and good will. The new diplomacy may easily be defended against the more serious charges levelled against the old; but this is far from saying that it is entirely adequate to the demands of the new era. Its methods are still circumlocutory, its aims not always above suspicion. Its critics, however, would do well to bear in mind that, on the whole, the technique of diplomacy is not inferior to that of some other activities of government; indeed, it would not be difficult to discover in other branches of the public service weaknesses akin to those which characterize diplomacy.

Perhaps, after all, the gravest defect in present-day diplomacy is the lack of the international outlook among diplomats and foreign ministers; that is, as Burns has put it, a lack of appreciation of the fact that all the " foreign " relations of every people affect, and are affected by, the whole state system of the world; [30] and, as a result, the dominating conception is that diplomats, and the governments they represent, are rivals seeking to promote selfish antagonistic interests, rather than friends in coöperation to promote the general welfare of the nations.

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[28] Arthur Ponsonby, *Democracy and Diplomacy* (1915), 61–62.

[29] *Ibid.*, 61–62.

[30] C. Delisle Burns in *International Affairs,* Norman Angell and others, 61.

Never, perhaps, has the function of the diplomat as an agency of international government been so important as it is today. It has been profoundly affected by two factors — rapid intercommunication, and the rise of democracy. The one has multiplied international contacts beyond imagination, and by the same token has increased the duties and responsibilities of the human agencies which function at precisely these points of contact. "The facilities of communication increase the opportunities for business, and the multiplying of business interests and intimacies of business relations serve not to lessen but greatly to increase the necessity for the factor of personality in contacts with foreign governments." [31] Democracy, moreover, has made it incumbent upon diplomats to embody the will, the purposes, the point of view, not of irresponsible masters, but of the peoples whose interests are entrusted to them. The diplomacy of the future must breathe the spirit of free government if it is to fulfill its mission.[32]

Moreover, the diplomacy of the new era faces specific tasks quite as difficult and complicated as any with which it has hitherto dealt. This is true because in the immediate future international relations are bound to undergo profound readjustments in theory and practice. Diplomacy, which seemed bankrupt in 1914, must restore confidence in its ability to work out these readjustments. Statesmanship rather than finesse is needed in the foreign offices and embassies of the world if the institutions of international government lately set up are to have a fair trial.

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Part IV

INTERNATIONAL EXECUTIVE AND ADMINISTRATIVE FUNCTIONS

CHAPTER XII

THE PROBLEM OF SANCTIONS

The lack of an effective executive power is generally held to be the gravest weakness of international government, and the development of such a power its most difficult problem. The point is commonly expressed by saying that international law lacks an adequate sanction, or means of enforcement. There is no international executive, if by this term is meant a definite agency or set of agencies corresponding to that department of national government charged with the duty, and armed with the power, to enforce the law. No international army or navy exists, no organized international police force of any kind. The importance of some such agency has been apparent to the makers of ideal schemes of international organization, and statesmen have pondered the problem deeply; but the society of states has thus far lacked the solidarity requisite for the establishment of a true international executive power, such an institution having been held incompatible with the doctrine of state sovereignty and its accepted implications.[1]

International government is vitally concerned with this problem, and not alone as bearing upon the nature and binding validity of international law in the narrower sense. The relations between states are still largely in the sphere of policy rather than of law; and until policy yields more completely to legal regulation, breaches of the international peace will be matters of international politics rather than violations of international law. In the meantime, international government is deeply interested in the development of executive agencies to keep the peace, whether war is threatened because of a violation of legal rights, or because of conflicting non-legal interests.

In this chapter will be reviewed the nature and value of the principles of public law which constituted whatever sanctions international society had placed behind its legal system up to the World War. Post-war developments will be discussed in Chapter XXX.

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[1] On the meaning and need of sanctions, and proposed sanctions in some of the historic schemes of world organization, see F. A. Ogg, Ch. VII in Duggan, *League of Nations* (1919).

Before proceeding to a consideration of the problem of international sanctions, it should be observed that executive organization has been one of the most troublesome problems in the development of national government. There has been a perpetual conflict between the individual and the state — between the ideal of personal liberty, and the exercise within the state of executive power affecting private rights. How government can be made effective without being too dangerously powerful, has been the perennial question. Governmental authority seems to weigh most heavily when exercised by the executive. Likewise, the recognition by soverign states of any external authority with power to hold them to their legal and contractual obligations, even though such authority should rest upon their free assent, seems to be far more in derogation of their sovereignty than the original assumption of the obligations themselves. And thus, as with the individual in his insistence upon abstract rights as against the power of his government, the creation of an international executive power has been opposed because of its assumed interference with the sovereign rights of the state.

I. The Balance of Power

The first of these executive principles to be considered is the so-called balance of power. The idea of an equilibrium of political forces, or a balance of power as it was commonly called, was recognized in modern Europe as early as the fifteenth century, in the interrelations of the principal Italian cities; in fact, during the Middle Ages, the Popes set up a system of equipoise in Italy, whereby two Italian interests could be set one against the other to secure the influence and safety of the Roman See. It became an established principle of European politics in the seventeenth century, and was formally recognized by the Peace of Utrecht in 1713.[2] The primary aim of the balance of power was to prevent any single state in the European system from pursuing plans of aggrandizement hazardous to the independence and national existence of the other states in the system. The theory was that once an equilibrium of forces had been established, any state attempting to disturb it by political means might be forcibly restrained by other states whose vital interests might be thereby jeopardized.

[2] An analogous principle characterized the inter-state politics of Greece. See C. Phillipson, *International Law and Custom of Ancient Greece and Rome* (1911), Vol. II, 101 ff.; A. S. Hershey, *Essentials of International Public Law and Organization* (Rev. Ed., 1927), 42, note.

Thus it came to be a maxim of European politics that interventions to preserve the balance of power were legal and necessary. It was a doctrine of self-preservation, which was deemed axiomatic by states liable to sudden invasion and without the protection of any general restraining and regulating authority.

The principle of the balance of power was not of an executive character in the narrow sense; it did not concern itself, for example, with the observance of treaties, or conformity to the customary law of nations, except as violations of treaty or law might be deemed part of a scheme of dangerous aggrandizement. It did, however, serve in theory as a guaranty of the most fundamental rights of states — their sovereignty, independence, and territorial integrity.

Illustrations of the Balance of Power

The history of Europe between the Peace of Westphalia and the Congress of Vienna affords familiar illustrations of the practical working of the balance of power. The balance established at the close of the Thirty Years' War, which was itself a struggle in which the principle had been invoked, proved highly unstable. The imperial ambitions of Louis XIV challenged the principle, and resulted in a cycle of wars in which alliances were formed to prevent French domination of Europe. The War of the Spanish Succession, which terminated in the Peace of Utrecht, of 1713, was waged to prevent a disturbance of the balance by the union of the crowns of France and Spain. By his conquests Napoleon disturbed the equilibrium of Europe, which was restored by the Congress of Vienna.

Throughout this period the doctrine was accepted without question; and even down to the opening of the twentieth century some of the foremost writers defended it. How otherwise, it was argued, could a group of states with conflicting ambitions and interests, whose philosophy of public law sternly forbade the creation of anything like a common superior, preserve the weaker members of the group against the evil designs of the stronger? [3] This, at any rate, was accepted theory with respect to the Great Powers; they must be their own international executive by maintaining a sort of automatic group equilibrium. As to the lesser states, the principle of the Concert of Powers was later invoked; that is, the Great Powers, as a self-constituted group, recognized their responsibility for the good conduct of those weaker members of the state society outside the Concert.

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[3] On the Balance of Power see T. J. Lawrence, *Principles of International Law* (7th Ed., 1923), 128–131.

But the balance of power principle afforded no permanent solution of the problem of international sanctions. If this conclusion had not become apparent before 1914, the Great War demonstrated it. At best it was itself a lawless executive; it had no constitutional basis or corporate embodiment; it was at the mercy of forces which it could not direct or control — forces which shifted and shuffled national groups with no regard to permanency, or the general welfare. Each resort to war in behalf of the principle resulted in the establishment of a new order thought to be sacred and immutable. The settlements effected by the Peace of Westphalia, by the Peace of Utrecht, and by the Congress of Vienna, each in turn regarded by its architects as final, were all swept away by the impact of forces which no stereotyped political order could long withstand. Perhaps the crowning weakness of the balance principle was psychological — that it was rooted in fear and distrust, not in mutual confidence and good will.

> "So in political practice," says Norman Angell, "the Balance of Power means a Rivalry of Power, because each, to be on the safe side, wants to be just a bit stronger than the other. You get a condition, indeed, in which security for both depends upon each being stronger than the other. In the end there is bound to be a trial of strength. It creates of itself the very condition it set out to prevent."[4]

Thus the policies of the states seeking to maintain the balance were inevitably self-centered, engrossed in the great-power game of watchful, suspicious waiting, and unmindful of that fund of mutual interests to the promotion of which all states, large and small alike, might make valuable contributions.

Alliances and the Balance of Power

The principle of the balance rests upon that of the alliance — can be made effective, indeed, only by invoking this type of political organization. Here, again, is a discredited device of international government. However useful the so-called defensive alliance may have been, in times past, in preserving the integrity of the society of states and of its individual members, it is open to grave objections as a means of vindicating the law of nations and preserving peace. Alliances are unstable and unreliable, weakened by the vicissitudes of group politics, and therefore impotent, it may well be, when most needed.

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[4] Quoted in H. M. Kallen, *The League of Nations* (1919), 3.

> Alliances between strong Powers excite and prolong jealousies, rivalries and suspicions among other States. Though they may purport to be purely defensive, no one can tell what secret provisions contemplating encroachment upon others they may contain. They are apt to breed an aggressive spirit, because a state which has powerful associates standing beside it or behind it, is tempted to take an arrogant or domineering attitude towards other states. [5]

Thus counter-combinations take form, each confident in its strength and unyielding in its attitude. And these evils are accentuated by the fact that alliances, resting as they do upon armed force, dispose nations to think in terms of armed force and tempt them to pile up armaments, not only for immediate self-protection, but to enable them to fulfill their duties to the alliance. Thus, as the writer above quoted further observes, "that militaristic spirit which regards force as the only source of safety and is ready to challenge the rest of the world is fed and nourished."

On the eve of the World War Europe exhibited the balance of power principle in all its completeness and in all its futility, as a device of international government. The division of the chief European states into two more or less coherent groups — the Triple Alliance and the Triple Entente — in the two or three decades immediately preceding the War, was a logical recognition of the principle. With no common executive of the public law of Europe, under which the integrity of states could be reasonably assured, and in the atmosphere of suspicion and fear which vitiated the statesmanship of Europe, there was no way but to seek alliances. Whether or not the balance principle postponed the conflict, it rendered it catastrophic when at last it came.

This crowning demonstration of the fundamental weakness of the balance of power as a practicable theory of international executive organization has led to its general repudiation, and to systematic efforts since the war to develop some sort of an executive power, general and representative in character, adequate to keep the international peace and guarantee respect for international obligations. These efforts and their results will be discussed in Part VIII of this book.

[5] James Bryce, *Williamstown Lectures on International Relations* (1922), 237.

II. The Concert of Europe

The Concert of Europe had in it the germ of a sound theory of international executive power. As already stated, it had its origin in the Holy Alliance organized in 1815 by the emperors of Russia and Austria and the king of Prussia, which was followed later in the same year by the renewal of the Quadruple Alliance between Russia, Prussia, Austria, and England. This alliance "undertook to suppress revolutions, maintain the Treaties of Paris and Vienna, and regulate the affairs of Europe generally." [6]

It recognized a certain measure of responsibility for the general welfare of Europe. When the Great Powers, or groups of them, intervened, it was upon the theory that conditions disturbing to the peace of Europe should not be tolerated.[7] Their interventions might be justified, at the moment, upon one special ground or another; the root of the matter was the assumption of the right to do police duty for the European state society. And so far as it performed this duty justly and effectively, it embodied a sound principle of international government.[8]

The Concert an Inadequate Executive

But the Concert principle had inherent weaknesses. The executive group was self-constituted and self-perpetuating. It was not based upon the democratic principle of the "consent of the governed," or upon any theory of delegated authority; indeed, from the standpoint of the lesser peoples immediately concerned, its interventions were often mere assertions of naked power.

Again, the Concert was too fickle an executive; it could not be depended upon to act when the general good demanded action. Its initiative was too often paralyzed by the conflicting ambitions of its members, or the rivalries of groups within its membership. The balance of power principle was a disturbing factor in the Concert, always weakening its cohesiveness and often rendering it powerless to deal wisely and courageously with dangerous or unjust situations.

The habit of coöperation was not strong enough to overcome the mutual suspicion which always existed among the concerting powers.

Thus there was a tendency for each Great Power to stand alone and to pursue its own interests. Yet as no Power really could stand alone, and as, on the other hand, the Concert was not sufficiently complete to ensure the safety and interests of each individual State, a middle course between absolute coöperation and individualism in international affairs was adopted; leagues or groups were formed inside the Concert Powers.[9]

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[6] Hershey, *op. cit.*, 85.

[7] See Ch. VII.

[8] For illustrative cases of intervention by the Concert, see Ch. VI.

These weaknesses are demonstrated by the familiar history of European politics during the nineteenth century. However high the real motives of the Concert, they were not always above suspicion; nor were its policies uniformly wise or enlightened, viewed in retrospect. It began with a crusade against popular rights in behalf of autocracy, in the Holy Alliance, and ended with a Far Eastern policy that would have doomed China to ultimate dismemberment had it been pursued to its logical outcome. And more specifically, a general police power that could suffer the crimes against Armenia to go unredressed, or so long tolerate Turkish oppression in Europe, left much to be desired as an international executive.[10]

Nevertheless, it could hardly be denied that the Europe of the nineteenth century was a better Europe for the activities of the Concert; but for some such supervising authority, it might well have been a politically chaotic Europe. From the standpoint of international government the theory of the Concert was a distinct advance over that of the balance of power, its significance lying in its embodiment of the principle of collective responsibility.

The history of these two devices of international control points a clear moral, namely, that neither a self-constituted inner group of powers nor a system of competing groups affords a sound solution of the problem of international sanctions. But viewed as prophetic of a World Concert, based upon the solidarity of nations and equipped with adequately endowed agencies of control, the European Concert was an interesting and encouraging experiment in international government.[11]

Apart from these principles of international organization having executive force, other more specific sanctions have been recognized in international theory and practice, among them being: (1) the action of a state, claiming an affront or an infringement of its rights, in severing diplomatic relations with the offending state — a move not amounting to war but often the prelude to war; (2) the resort to war, or to measures of reprisal; (3) economic sanctions, commonly referred to as the economic boycott; and (4) public opinion. The economic boycott will be discussed as a sanction expressly prescribed in the Covenant of the League of Nations, as will coercive military measures internationally applied under the Covenant.[12] War and other coercive policies resorted to by nations as measures of self-help, and public opinion, fall into this general discussion of the international executive function; and because they are commonly considered to be the only really effective international sanctions, they merit careful consideration, in principle as well as from the standpoint of practical international politics.

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[9] R. B. Mowat, *The European State System* (1923), 87.

[10] For interesting historical résumé of the activities of the Concert, see J. W. Garner, *Recent Developments in International Law* (1925), 592 ff.

[11] On the Balance of Power and the Concert of Europe see: Duggan, *League of Nations* (1919), Ch. II by C. J. H. Hayes, and Ch. IV by John Bassett Moore; F. C. Hicks, *The New World Order* (1920), Ch. II; H. N. Brailsford, *The War of Steel and Gold* (3rd Ed., 1915), Chs. I and X.

III. National Force as an International Sanction

War, and coercive measures short of actual war,[13] have in times past been looked upon as an effective executive power behind international law and the society of nations. The theory was that the fear of reprisals, that is, of retaliatory measures, or of full-fledged war, restrained nations from law-breaking and injustice, and thus tended to keep the peace and vindicate the law of nations.

This idea of national coercion, by war or reprisals, as a necessary executive principle in international government is held widely enough to entitle it to examination. It may be compared to the penalty wherewith municipal government visits the violator of its laws, which in turn implies the right, and the necessity in proper cases, of ultimate resort to force by the state to vindicate its internal sovereignty.

The analogy between war, or the threat of war, against a violator of international law, and the penalty denounced against the criminal by national law, is superficially obvious. Both war and penalty have executive virtue, generally speaking, because both tend to restrain prospective lawbreakers; but the analogy weakens on the most cursory analysis of the theories underlying these two types of sanction. The penal system of a state is itself a creature of law — an expression of the sovereign will of the state. Judge and sheriff and executioner all function as the impersonal agents of the state to vindicate its law. They are a part of its system of legal administration, and have no official existence apart from that system. They have no will of their own; they embody the will of the state.

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[12] Ch. XXX, Sub. II.

[13] Such as retortion — the international version of the maxim: "An eye for an eye"; reprisals proper — evening the score by some sort of retaliatory action; embargoes, pacific blockade, etc.

War Not a True International Sanction

On the other hand states, in waging or threatening war, in no sense act as officials of the international community to execute its laws. They are a law unto themselves; their sovereign personality itself implies the right to make war, and to be the sole judge of the proper occasion for war. They are not the appointed agents of international society to enforce its will, but rather the self-appointed executors of their own will. In the national sphere the executive process is set in motion by force of the very system which it seeks to protect and vindicate; in the international sphere, the so-called executive sanctions — war and reprisals — are initiated, not by the state acting as the legally constituted agent of the community of states, but primarily as the guardian of its own interests. In so far as it conceives of itself at all as the representative of the state society, it is a self-constituted and self-authorized representative thereof. But nations do not ordinarily go to war for the Utopian purpose of vindicating the abstract principles of international law, or of punishing concrete infractions of it. Only when those principles are violated to the harm of a state does it ordinarily intervene as an international policeman. A true executive power must be fully controlled by the law which it is designed to execute, not merely as to the methods pursued in its exercise, but also, and especially, as to the occasions of its intervention.

War is a legally recognized international status in that international law lays down rules for its conduct; it is not a true international agency for the enforcement of international law. In the latter sense it is

> something outside of the system of international law; it is invoked where that system fails; it is a return to what has often been termed a state of nature, when human beings were assumed to be living without organized society, with no human laws, each a law to himself, and each enforced, if possible, by the might of his own arm, what he deemed or claimed to be his personal rights.[14]

Thus from the rational point of view war is a crude substitute for, rather than an agency of, international government. It is an " ultimate means of self-help,"[15] resorted to because international law affords an injured state no other means adequate, or deemed adequate, to redress its wrongs.

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[14] J. N. Pomeroy, *International Law* (1886), 19–20, who urged this view in support of the theory that international law is not true law.

> " It is impossible to agree with those publicists who hold that war is the real or main sanction of the Law of Nations; for the attempt to characterize war as a guarantee of law or as a means of justice in ordinary cases must be considered harmful as well as vain unless concurred in by practically the whole or main body of the International Community.[16]

In other words, unless war is resorted to under the sanction of international society, in its name and as its instrument of justice, it is not a true international executive. One of the most encouraging signs of the times is that this conclusion seems to be gaining both popular and official acceptance.

IV. Public Opinion as a Sanction

In default of an organized executive power to enforce international law, public opinion has been deemed its most effective general sanction. The theory is that states observe the law in order thus to win the respect of the general body of states, while to do otherwise brings down upon them the moral condemnation of the world, because in the legal precepts of international society mankind finds " an increasing approximation to the rule of right, to the standards of justice and humanity which are of almost universal acceptance." From a less ideal point of view it is said that international law is observed " because states do not think it worth while to break its rules, as any inconvenience they might suffer by such observance is more than counterbalanced by the advantages which flow from the maintenance of a condition of peace." Thus sentiment and self-interest combine to place nations on the side of law observance, and serve to array them against a violator of the code.

That this is measurably true under normal conditions cannot be denied. Civilization can exist only under a régime of law; no state system can possibly endure save as its interrelations are regulated under rules which assure to each member a reasonable measure of justice and security. The realization of this indispensable condition of inter-state life instinctively prompts nations to keep within the law, and as instinctively prompts them to condemn a nation which oversteps the limits of the law. This sanction, it will be observed, exists quite independent of any ability, or any disposition, to use force against a law-violating state. It is not associated with the contingent exercise of coercive power, or the denunciation of penalties, against such a state. Thus, for whatever it is worth, it may exist and function without any executive organization whatever.

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[15] C. G. Fenwick, *International Law* (1924), 428.

[16] Hershey, *op. cit.*, 10–11, where authorities on this question are cited.

The validity of this sanction becomes apparent when a precisely analogous factor in the enforcement of domestic law is noted. The penalty prescribed for breach of a criminal law, even when reasonable certainty exists of its infliction, is by no means the full sanction of the law. Fear of personal and family disgrace, of social ostracism, is without doubt a powerful deterrent from crime, unconsciously restraining many a person who would otherwise take his chances with the law.[17] The vital influence of public opinion as a factor in municipal law enforcement is a commonplace of political science. A police regulation backed by public opinion is one thing; the same regulation unsupported by public opinion quite another.

The power of public opinion as a steadying, restraining force in international relations is undoubted. A good reputation for integrity in its political or financial dealings, for fidelity to its obligations, and for respect for law, is as valuable an asset to the nation as to the individual. Indeed, the potency of this imponderable factor in the intercourse of states, in this age of close and mutually advantageous association between nations, may easily be underestimated.

The International Mind Difficult to Attain

But the international sanction of public opinion, genuine and powerful as it is, does not afford an adequate sanction for international law. Three or four reasons may be suggested why this is true. In the first place, international public opinion takes form with very great difficulty. What men think is inevitably conditioned, and more or less circumscribed, by their immediate environment. To view international affairs in true perspective, to distinguish between right and wrong in international act or policy, presupposes a knowledge of the facts of international life not easily attained. To cultivate the international mind, as President Butler has termed it, involves a wide mediate environment. The result is that electorates, even in advanced nations, and however well-intentioned they may be, often find it difficult to take a general rather than a local view of international matters. Especially is this true when the situation presented to them affords scope for an appeal to patriotic sentiments; time and again has the power of this emotional appeal swept a people off its feet. It is not that a people deliberately wills the wrong rather than the right — the illegal rather than the legal thing; but that it finds it easy to persuade itself, in all honesty, that the seemingly patriotic course is the right, the legal, course.[18]

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[17] Indeed it is pointed out that law itself plays a comparatively small rôle in the prevention of wrong-doing, because it covers but a small part of the whole category of wrongs. Francis Bowes Sayre, "Crime and Punishment," *Atlantic Monthly,* Vol. 141, 735 (1928).

But it is encouraging to note in this connection, that the agencies for educating and moulding international public opinion were never so numerous and influential as now. The printing press and its powerful allies, the telegraph, the cable, and now the radio, may almost be said to have made possible international government based upon public opinion. Facilities undreamed of in any other age are now afforded the public for reaching conclusions based upon the facts of international life. Periodical literature dealing with foreign affairs; organizations devoted to research and the maintenance of information and reference services;[19] great journals covering the civilized world with their newsgathering agencies; international organizations of all sorts to promote better understanding between alien peoples; facilities for world-wide travel of which increasing numbers take advantage; international commercial enterprises which bring alien groups into coöperative contact; a multiplying number of international gatherings to promote interests of almost every conceivable kind — all these things are exerting a powerful influence upon international thought, and so laying the foundation for a true public opinion on international matters.

Unfortunately, formidable influences oppose this movement — the self-interest of national groups, the almost instinctive distrust of the foreigner, the indifference to foreign affairs of large sections of the heterogeneous electorates resulting from universal suffrage, patriotism of the chauvinistic sort — all the more extreme manifestations of the forces which constitute what has elsewhere been discussed as nationalism. Nevertheless, the movement is the most promising aspect of modern international relations.

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[18] See further references to this point in Chs. III and XI.

[19] Like the Foreign Policy Association of New York and the American Library in Paris.

Public Opinion in Crises

In the second place, public opinion fails to perform its true function as a steadying influence in times of strained international relations. Such situations develop rapidly in the sensitively organized life of modern nations. Uninformed peoples rally instinctively to the support of their governments. It would be quite unjust to characterize their mental attitude by the slogan: " My country right or wrong "; rather they rest upon the assumption, which it is deemed treason to question, that their country is right. With no time or opportunity to understand the essential facts of the case, no other assumption seems compatible with security, and with that loyalty to government without which, after all, government could not exist. On the other hand, those in authority, burdened with a sense of their trusteeship and facing a crisis, dare act only as they feel their people expect them to act under the circumstances. Thus public policy is caught in a vicious circle. Once the die is cast it is sometimes the deliberate policy of governments, not only to keep their people uninformed as to the true progress of events lest morale be weakened, but even to falsify in order to nourish patriotic sentiments. It is under such circumstances that the structure of international law suffers; many of its rules are ignored, and rights universally recognized as such ruthlessly violated.

Again, it is undeniable that certain theories of the state, and of the legal relations of states one with another, sometimes forming the background of popular thought on international affairs, are inconsistent with the fundamental concept of international law. The idea of a legal rule presupposes its universal binding obligation within the realm for which it is prescribed; otherwise it would not be law. Thus international law is valid only upon the theory that it commands the obedience of its subjects.

It follows, then, that whenever the policy of a state comes into conflict with a precept of international law — as for example, in the conduct of war — policy must yield to law as the rule of superior validity; on no other principle, indeed, can the integrity of international government and law be maintained. But there is a theory of the state which tends to exalt national policy above international law, and to hold that in case of conflict the latter must yield. Such a theory, needless to say, is quite incompatible with international government based upon law; and in any state which espouses this theory, or would yield to it under pressure of its peculiar national interests, public opinion would measurably fail to constitute a sanction for international law.

Public Opinion Inadequately Voiced

Finally, public opinion affords an inadequate sanction for international law because it has no effective organs of expression. It is not enough that sound public opinion exists; there must also exist avenues of publicity whereby it can be brought to bear, quickly and effectively, upon issues threatening international peace. As has been stated above, it is quite inarticulate at the very times when it should command the situation; but even under normal conditions it is extremely difficult for public opinion on international questions to find adequate expression. Statesmen are often equivocal or chauvinistic because they dare not be frank; [20] writers too often yield to the feeling that the reading public expects a strong bias in favor of the foreign policies of the government. Thus what the informed, fair-minded citizen is thinking has scant avenue of expression, even at home. Still less is there, as between groups of alien peoples, any real exchange of views — any of that face-to-face, give-and-take debate whereby individuals clarify their differences, take each others' point of view, and perhaps arrive at some common understanding.

This weakness of public opinion is being remedied materially by the development of the "conference habit." Facilities for travel make it easily possible nowadays as never before for far-flung nations to meet in conference. The number and variety of the international conferences, official and unofficial, that are held annually is astonishing.[21] Whether avowedly political or not, they promote fellowship and understanding, and pave the way for better international relations.

The master political conferences, of course, are the annual meetings of the Assembly of the League of Nations, and the more frequent meetings of the Council. Before the Assembly any member state which has a grievance may air it, appealing to the peoples there represented for a more sympathetic understanding of its case. Thus the League is at once an instrumentality for the moulding of public opinion and an organ for its expression.

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[20] See Walter Lippmann, "Democracy, Foreign Policy and the Split Personality of the Modern Statesman," 102 *Annals Am. Acad.*, 190 (1922).

[21] See Ch. XIII.

International Law Normally Well Observed

Public opinion, then, admittedly fails to afford a fully adequate sanction for international law. Despite the increased facilities for its nourishment, and the multiplying avenues for its expression, it is still relatively uninformed and unorganized, hampered by national interests and prejudices, and powerless when most necessary to guide and temper policy.[22] Nevertheless, in normal times, international law is extraordinarily well observed. It is a great mistake to assume, as many do, that the rules of international law are treated by governments, in their everyday intercourse, as a mere code of etiquette, or even as rules morally binding, rather than as precepts of strict legal validity. On the contrary, with rare exceptions, enlightened states conform to them with scrupulous exactness. Their legislatures arm them with the laws necessary to enable them to meet their legal obligations as states, and their courts adjudicate upon questions of international law, on the whole, justly and impartially.[23] Indeed, it would not be too much to say that normally international law is as generally obeyed by states as is their domestic law by their citizens. To condemn international law as lacking sanction because it is occasionally violated — and violated with impunity — is to forget the grave problem of domestic law enforcement.

International Law in Time of War

The critical attitude towards international law is particularly in evidence at times when, in the stress of war, wholesale violations of its well-recognized rules are committed. Every important international war has involved this situation; and it is then that international law is held in slight public esteem. This was particularly true during and after the World War. Not only did the uninformed public bitterly condemn the whole system as futile and illusory; even public men broadly asserted that it had completely collapsed, and that the world faced the task of erecting a new structure of international law.[24] On this attitude, unfortunate but natural, two or three comments are in point. First, even during the Great War, observance of law by belligerents was the rule, violation the exception; but the wide publicity given the exception obscured the rule. Second, wholesale infractions of law, even its utter repudiation for the time being, cannot serve to repeal it. Those who bitterly declared that the World War left the nations law-less, forgot that wholesale violations of domestic law have no such effect — not even the complete denial of the authority of the state, in time of insurrection, by numerous elements of the population.

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[22] President Lowell's illuminating studies of the nature, scope, and basis of public opinion: *Public Opinion and Popular Government* (New Ed., 1926), and *Public Opinion in Peace and War* (1923), throw much light upon the problem of public opinion as a factor in international relations. On this general subject see also Walter Lippmann, *Public Opinion* (1922).

[23] See W. D. Guthrie, *The League of Nations and Miscellaneous Addresses* (1923), 9–11; also Elihu Root, "The Sanctions of International Law," 2 *A. J.*, 451 (1908).

[24] For statements of this view, with numerous citations, see Garner, *op. cit.*, Lecture XV.

Third, the very emphasis placed upon belligerent violations of the laws of war bore witness to the reality of those rules. If they were not deemed of binding obligation; if they found no support in world sentiment entitling them to obedience, why did neutrals and law-abiding belligerents unsparingly condemn violations of them, and the offending belligerents, on the other hand, undertake with equal vigor, either to deny the commission of the questionable acts, or to justify them on legal grounds? As a matter of fact it is worthy of note, in passing, that some of the popular skepticism about the sanctions of international law during war must be attributed to the mistaken idea that war is unlawful — a forbidden breach of the international peace analogous to the offense penalized by municipal law; that resort to war is *per se* a violation of the code of international law. Such, however, is not the case. Thus far international law has undertaken to regulate the conduct of war rather than to prohibit or penalize it. The resort to war is indeed a tragic evidence of the weakness of the forces that make for legality in international affairs; it shows that international law falls far short of an adequate regulation of international relations; but it cannot justly be taken as a demonstration of the inherent weakness of existing international law.

> Its defects consist, therefore, not in the absence of commonly recognized rules to govern the situations usually arising, nor even in their general non-observance; but rather in the physical inability — under the present international organization — to enforce its sanctions when the Great Powers simultaneously disregard its provisions, and in the lack of a sufficiently strong legal organization of the nations of the world to compel joint action if the rules are violated by any member of the society of nations.[25]

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[25] P. Fiore, *International Law Codified and its Legal Sanction* (5th Ed., trans. by E. M. Borchard, 1918). Introduction by Professor Borchard.

V. Enforcing Agencies of the State

But international law is not entirely without normal means of enforcement, even though international government has failed to organize an executive. This means is afforded by municipal law, and takes various forms. To illustrate: Each state is bound to lend its laws and its executive agencies to the fulfillment of its obligations under the rules of international law as well as under its treaties. For example, as a neutral power it must provide measures to protect its neutrality, and if it fails to do so it incurs international liability.[26] Again, each state is bound to take adequate steps, by way of statutes carrying penalties for their violation, for the protection of foreign diplomatic representatives residing at its seat of government, in the enjoyment of the privileges and immunities accorded them by international law. And more broadly, the executive and judicial agencies of the national governments are also, in a real sense, organs of international government. If a treaty is to become operative by force of executive action, it is the duty of that department of government in the treaty states to meet this obligation. Finally, national courts are constantly dealing with cases involving principles of the common law of nations, or questions concerning the validity or interpretation of treaties; and their judgments in such cases are given full force and effect under domestic law.[27]

With whatever fidelity states may discharge this function of international law enforcement, it is admittedly a defect of international government that it possesses no effective executive agencies of its own. Real sanctions must rest upon some sort of coercive power, and power is still controlled by the separate states exclusively. Thus international society resembles a loose confederation, endowed with a system of law but obliged to rely upon its constituent units for the sanctions necessary to vitalize that system. This being the case, it is a matter of great importance, both nationally and internationally, that states, each within its sphere, lend themselves conscientiously to the fulfillment of their international obligations; but important, also, that they recognize the weakness of international government on its executive side, and coöperate, so far as may be, in the building up of executive agencies within the framework of international government itself.

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[26] The Alabama Claims arbitration between Great Britain and the United States affords an example of the failure of a state to protect itself against unneutral conduct by adequate neutrality laws and effective administrative action.

[27] See Quincy Wright, "The Enforcement of International Law through Municipal Law," in *University of Illinois Studies in the Social Sciences*, Vol. V, No. 1 (1916); also Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), 137 ff.

The Movement for More Effective Sanctions

In view of the admitted inability of international government to deal effectively with international crises threatening war, owing to its lack of coercive authority in such emergencies, determined efforts have been made since the World War to meet this need by setting up some sort of machinery armed with effective sanctions. Attention will be turned to these developments in Part VIII of this volume. It may be noted here that the principle underlying the plans proposed is that of collective responsibility for peace. It is generally recognized that international law, normally well observed, fails to take command of situations which threaten war. Here international government exhibits a double weakness: Its legal system is not yet comprehensive enough to embrace the most fundamental causes of war, and even within its restricted sphere its normal sanctions lack efficiency in crises. The plans to be discussed later undertook to make the resort to aggressive war illegal, and to provide machinery to punish a law-breaking nation.

Thus the sanction of the law would be found in the collective responsibility of the nations for peace. Hitherto no such responsibility has been legally incumbent upon states. Such manifestations of it as have appeared from time to time, as in the activities of the Concert of Powers already discussed, have been in the realm of policy rather than in that of law. The difference is fundamental.

VI. Rôle of Force in International Government

Whether or not it is feasible to undertake to enforce this collective responsibility by coercive power, in the present state of international society, is a grave question. The issue has been sharply raised over the various proposals to back up the decisions of the League of Nations with punitive sanctions, to be discussed in due course; and earlier, in the debates to which the American League to Enforce Peace gave rise. The affirmative argument, briefly stated, is that government, in whatever sphere it functions, rests in the last analysis upon force; that however it may be camouflaged, and however infrequently it may be invoked, force necessarily lurks behind all the processes of government; that international government is no exception to this universal rule, and that, therefore, it will forever tremble on the verge of anarchy until armed with might commensurate with its responsibilities.

Against this view it is urged that the rôle of force as a legal sanction is overstressed, even in domestic government. Municipal law, the argument runs, derives its binding validity, not alone or chiefly from the penalties denounced against the law-breaker, but from a variety of considerations weighing heavily on the side of law observance. Lord Parmoor has aptly expressed this idea:

> The ordinary citizen is law-abiding, and complies with legal obligations, because these obligations accord with his sense of moral duty, and are accepted as regulations beneficial to the peaceful conduct of mutual intercourse with other members of the same community. In the ultimate analysis, the obligations of nations, and individuals, towards one another stand on not dissimilar principles.[28]

Thus the appeal is to non-coercive incentives to obey the law, — those dictates of courtesy, neighborliness, and comity which the late Lord Haldane characterized in the noble phrase "The Higher Nationality," reinforced, moreover, by considerations of practical self-interest — the value of good reputation as a national asset, the prestige attaching to nations openly allying themselves with the forces of law and order, the economic advantages of an international régime effectively regulated by law, and the like. Without doubt these imponderables are increasingly on the side of legality in international relations; nevertheless their adequacy as an executive influence, unsupported by coercion as a reinforcement in times of stress, is debatable.

This question is too large to be discussed at length here. The non-coercive sanctions of international law will undoubtedly grow stronger with the development of international society. The more delicate the adjustments of a social order, and the more intimate and vital its contacts, the more patently advantageous is a régime of law. But whether the rapidly growing sense of international solidarity may be counted on as an effective guarantee of peace, unaided by collective force, remains to be seen. The experience of the League of Nations has already disclosed the grave obstacles in the way of securing international agreement upon any adequate scheme of executive organization.

[28] "The League of Nations and Punitive Sanctions," *Contemporary Review*, Vol. 123, 35 (1923). See also post, Ch. XIX.

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CHAPTER XIII

THE INTERNATIONAL ADMINISTRATIVE FUNCTION

As has been elsewhere pointed out, one of the most important recent developments in national government has been the marked increase in what are called administrative functions and machinery. In dealing with such vital matters as health and sanitation, transportation and the like, legislatures lay down fundamental policies under statutes of broad scope, delegating the power to carry out such policies to small permanent bodies, able to work out the details of administration by applying the principles of the law to concrete cases as they arise. Such administrative bodies have come to be an important part of the machinery of national and local government.

The necessity of this close and constant administrative supervision arises from the fundamental importance to the citizen of the matters thus regulated. So complex is modern society, so inter-related its various parts, that any serious interference with the machinery of intercourse, for example, or neglect or incompetency in enforcing measures to conserve the public health, inevitably becomes a matter of general concern. Thus in the national sphere this administrative function, steadily broadening its scope with the growth of populations in numbers and interdependence, has become a social necessity.

I. Rise of International Administrative Unions

A parallel development is observable in international society. Just as the economic specialization and social contacts made possible by the marvels of modern transportation and communication have necessitated efficient control of the factors making for social welfare within the state; so internationally, the same problems precisely have given rise to quite similar agencies of regulation. Thus has come into existence, since the beginning of the nineteenth century, a series of administrative bodies of peculiar interest to the student of government, and of great practical importance in international relations. International administration has not, to be sure, developed agencies having the jurisdiction and power of the similar domestic bodies; but a surprisingly large number of international bodies under various designations, and performing a variety of regulative functions, have come into existence in recent years. Indeed, this new phase of international government is one of the most striking in the whole realm of international relations; and yet comparatively little is popularly known about it, so gradually and non-spectacularly has it developed.[1]

Private International Administrative Organizations

The need of administrative supervision of, or unified control over, such interests as industry, commerce, and communications, in their various international aspects, has been met both by public and private organizations. Of the latter hundreds have been formed, and the interests they serve are legion. It is hardly too much to say that no activity in any of the major departments of human endeavor — agriculture, trade, industry, labor, communications and transit, medicine and hygiene, economics and finance, law, humanitarianism, religion and education — is unrepresented by some international association.[2] These private associations often receive public support and sometimes develop into the public unions with which this chapter primarily deals. They hold international conferences or congresses from time to time, the number steadily increasing of late years with more rapid means of travel and the growing need of coördinated effort in behalf of their common interests.[3]

In the form of their organization they closely resemble the public unions, the typical association being made up of national units which send delegates to its conferences — the familiar federalistic principle of organization. So also, these associations quite commonly support a central administrative office or bureau, which performs functions similar to those of the public administrative bureau.

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[1] The leading authorities on International Administrative Organizations are Paul S. Reinsch, *Public International Unions* (2nd Ed., 1916), and F. B. Sayre, *Experiments in International Administration* (1919). See L. S. Woolf, *International Government* (1923), and Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), for briefer treatments.

[2] Potter, writing in 1921, estimated that there were 500 or more of these private organizations. *Op. cit.* (1st Ed.), 289. For a good idea of the multitudinous interests served by them, see *Handbook of International Organizations,* published by the League of Nations (1926). See also Edward Krehbiel, *Nationalism, War and Society* (1916), 130 ff., for a selected list of such organizations.

[3] Potter, *op. cit.,* (3rd Ed., 1928), 38 note, has a table of these meetings from 1840 to 1914, from which the interesting fact appears that in the single decade 1900–1909 as many were held — to be exact, 985 — as are listed for the entire period from 1840 to 1900. For a detailed list of the more important private international congresses and conferences down to 1907, compiled by Simeon E. Baldwin, see 1 *A. J.,* 817–829.

The wide range of the interests served by these associations is astonishing. In agriculture they run all the way from the International Committee for Bird Protection to the International Association of Seed Crushers. Labor is represented by associations or federations, more than fifty in number, dealing with workers in all sorts of industries. In finance there is the International Chamber of Commerce — a powerful body — and the International Statistical Institute; in law the influential Inter-Parliamentary Union. The arts and sciences are represented by well towards a hundred international organizations, and humanitarianism, religion, morals, and education by an even larger number. Sport and travel, international languages and feminism come in for substantial representation.

The significance of this development cannot easily be overstated. It marks the transition from the old international order to the new. It indicates that private interests have overrun national boundaries, and have demanded measures of conservation which the national governments have for the most part denied them, for one reason or another. These associations are not in the main altruistic, but rather exist for practical advantage, seeking which they do not hesitate oftentimes to bid for the support of the national governments, and not infrequently with success. But their influence is perhaps most clearly seen in the contemporaneous appearance of the international administrative bodies of a public character presently to be discussed. It might be difficult to trace the definite relations in origin between the two sets of organizations, but clearly the habit of coöperation fostered by these private associations, their obvious utility, and the demonstrated need of supplementing private initiative with official aid in respect to the more important interests, have contributed to the rise of administrative unions under governmental control.[4]

Need of Public Administrative Bodies

These public administrative unions have come into existence in response to various specific needs. The growing economic unity of the world has rendered restrictions upon the free interchange of commodities more and more burdensome, thus giving rise to a demand for the removal, by international action, of certain impediments to the ready flow of trade from country to country. And as indispensable handmaids of commerce the telegraph and the mail service have needed international regulation to free them from the hampering restrictions that competing nations might otherwise impose. Hence a group of unions dealing with commercial interests.

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[4] On private international conferences and associations see Potter, *op. cit.*, Ch. III; F. C. Hicks, *The New World Order* (1920), Ch. XX. For interesting comment see article by Simeon E. Baldwin on "The International Congresses and Conferences of the Last Century as Forces Working Towards the Solidarity of the World," 1 *A. J.*, 565 (1907).

Again, industry has attained a surprising degree of international unity. Unfavorable conditions of work in any important industrial nation are likely to react adversely upon labor in other countries; while inefficient methods of production anywhere tend to decrease the world's supply of the necessaries of life. Thus it has come to be deemed important that there be a free international interchange of information as to industrial and agricultural methods, so that the fruits of scientific study in the field of production and distribution may be more generally and readily available. Hence the need of international action regarding such economic interests as agriculture and labor.

Analogous reasons have dictated governmental measures to conserve the health of the world by dealing coöperatively with communicable diseases such as have repeatedly ravaged Asiatic and European countries in modern times. Furthermore the interests of science, abstract and applied, have been promoted through international action taking the form of permanent organizations or conferences meeting from time to time to secure the collaboration of experts and the exchange of knowledge as to scientific discoveries. The obvious theory underlying the development of the international administrative union is, that where you have an activity or interest requiring constant supervision, you must create permanent agencies to supervise it — a theory especially applicable to international matters because of the difficulty of calling nations together in frequent periodic conferences.

The number of these official unions is surprising. A recent writer states that there are fifty or more in existence, while a number have ceased to exist.[5] A comparison of the dates of origin assigned in a list tabulated by the same writer as of 1915 brings out the striking fact that during the twenty-five-year period prior to 1915, approximately as many of these bodies came into existence as during the entire period from 1890 back to 1804, the year when the first of them, the Central Rhine Commission, was set up.[6] It has been a haphazard, purely opportunistic development, dictated by no fixed policy and following no hard and fast precedents. Whenever the need of regulation at some point of international contact has become sufficiently insistent, a piece of regulative machinery has been built to meet that need.

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[5] Potter, *op. cit.*, 171. Sayre, *op. cit.*, 18, places the number at "over thirty," giving at page 34 a list and classification published by Woolf, *op. cit.*, 159–161.

The interests thus dealt with have covered a wide range; types of organization have varied greatly in details. Many unions have failed to justify their creation for one reason or another; — either that the object sought turned out to be too unimportant to enlist adequate support on the part of the member states; or because the parties concerned were unwilling to delegate power enough to the administrative body to enable it to function properly; or because the situation was too difficult to be handled in the way proposed.[7] But the fact remains that a considerable number of these unions have been eminently successful, thus demonstrating the feasibility of this type of administration in cases where the real importance of the end to be attained prompts nations to set up agencies armed with power enough to attain it.

The Permanent Bureau

The characteristic feature of these official international unions is the bureau, or permanent administrative body, sometimes called the commission, which in its constitution and functions reveals the fundamental reason for their creation. The majority of the unions maintain these standing administrative organs, but a few do not, performing their functions through conferences. The Automobile Convention of 1909, for example, while sometimes listed as a public international union, did not create a bureau as an organ of international government; and thus it differed in no essential respect from any other diplomatic conference or convention. It was a union of states for certain administrative purposes, and the convention merely an agreement on the part of the member states each to take certain administrative measures.[8] In this respect it was fundamentally unlike the unions under consideration. They mark a distinct advance in international government in that they pass beyond the realm of diplomacy and concurrent state action into that of administration by joint action through a common organ of government.

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[6] *Ibid.*, 1st Ed., 270. Valuable statistical information as to many of these unions may be found in the *Handbook of International Organizations,* published by the League of Nations, referred to above.

[7] Sayre, *op. cit.*, 147 ff.

[8] Woolf, *op. cit.*, 158.

Sometimes the bureau is referred to as though it were the union, whereas it is merely the agent of the union. The bureau serves purposes which could be served indifferently, if at all, through mere international conferences relying for administrative action upon the member states, and for two or three main reasons: First, it is a standing body — a prime requisite of administrative efficiency; second, it is non-political and therefore unembarrassed by the uncertain and contentious policies of the home governments; third, it is primarily a body made up of experts who measure their work by accepted standards of efficiency. It is not to be assumed, of course, that these administrative bureaus always function non-politically, or efficiently. A few have failed because they did not so function; but on the whole they handle their interests, however essentially political they may be, in the non-political spirit; while the qualifications and continuity in service of their personnel are fairly dependable guarantees of expert administration.

II. General Functions Performed

Before proceeding to a brief review of some of the more important unions, reference should be made to the general character of the functions performed by the various types of union. One class, including the larger number, is entirely or chiefly concerned with the collection and distribution of information. Such, for example, is primarily the work of the International Institute of Agriculture, although, as later pointed out, it may and does, to some extent, go beyond this informational function. Other illustrations of this type of union are the Union for the Protection of Industrial Property (1880), and the Union for the Suppression of the African Slave Trade, set up in 1890.[9] This fact-gathering service is incidentally rendered by some unions whose chief functions are of another character.

Unimportant as this task of gathering and disseminating statistical data may at first blush appear, it is by no means such in fact. In some fields, at any rate, it must be performed coöperatively, if done at all well. In the first place governments are reluctant to go to the trouble of exchanging information each with every other, but they will, under international agreement, submit their data to one central office. Moreover, much of the value of statistical material is lost if not promptly submitted; and it is the business of the bureaus of these unions to quicken the diligence of their member states. Again, it is often made the duty of the bureau to prescribe the form in which data shall be submitted, in order to be most useful for statistical purposes. Then too, the government departments concerned, perhaps aided by general regulations sent out by the bureaus and stimulated by pride in the excellence of their reports, organize their own machinery for the investigation and compilation of data more efficiently. And finally, the experienced staff of the bureau is able to classify and analyze the data submitted so as to make it of maximum value.

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[9] Sayre, *op. cit.*, 27–28.

Having in mind the extent to which modern legislative and scientific methods depend upon full and accurate statistical material, the significance of this fact-gathering function is apparent. One has only to examine the publications of the International Institute of Agriculture, for example, or those of the International Labor Office, or the technical organizations of the League of Nations, to be impressed by the great value of the apparently simple informational tasks which such bodies perform.

Other administrative bureaus go beyond the functions just described, to a greater or less extent. Through their official publications, and especially through the periodical conferences for which they prepare the materials and programs, they induce discussion of matters of general interest within their respective fields, resulting, it may be, in international conventions, or in concurrent national legislation dealing with some matter so considered. It may be made their official duty to formulate definite proposals for debate at such conferences, and in so far as it is, they perform a true legislative function. As to bureaus which serve as clearing houses for views and opinions, they have been aptly called in some sense a permanent international conference.[10]

Power of the Bureau

These administrative unions may be considered from another point of view — that of the scope of the power exercised by their bureaus, or permanent executive agencies. Generally speaking, the bureaus of the unions just considered have little or no authority to bind the member states by any action. Their power is administrative and ministerial, derived ultimately from the convention which is the constitution of the union, and expressly limited thereby. But in this connection the bureau is to be distinguished from the union, as established by the convention; the latter may have considerable power. The member states may have acquired rights which it is the duty of

[10] Potter, *op. cit.*, 175.

the union to secure to them, and assumed obligations which the union has the power to enforce. The point is that such powers of guaranty and enforcement enjoyed by the union are not ordinarily vested in the bureau. The permanent bureau of the Universal Postal Union and the Permanent Commission of the International Institute of Agriculture are of this type, being confined mainly to functions of an administrative or ministerial character.[11] Their value is not to be minimized on that account, however; the only point now made is that these bureaus as such are not the repositories of the sovereign power of the member states.

In another and smaller class fall certain unions whose administrative organs possess real power of control. This power may extend only to supervision over the business entrusted to the union; or in still rarer cases it may go so far as the exercise of control over the member states themselves. Of the former type is the European Danube Commission; [12] of the latter, the Sugar Commission is the outstanding example. Certain commissions, a series of which have supervised navigation of the Rhine River since 1804, are also in this class.[13]

III. UNIONS TO PROMOTE INTERNATIONAL COMMUNICATIONS — THE UNIVERSAL POSTAL UNION

Again, these unions may be classified according to the general character of the interests which they serve. Roughly they may be divided into five groups, the first group comprising those dealing with the various aspects of communications, among the more important of which are the Danube Commission (1856), the Telegraphic Union (1865), the Universal Postal Union (1875), the Wireless Telegraphic Union (1906), and the International Commission for Air Navigation (1922). The Telegraphic Union may be referred to briefly, as being the first of the more important administrative unions.[14]

Telegraphy was seen from the first to be a matter of international concern. Restrictions upon the transfer of messages across national frontiers would have seriously impaired its usefulness as an instrument of commerce and communication. At first treaties were made between individual states concerning telegraphic communication. The first telegraphic union was between Austria and Germany in 1850; another was established between France, Belgium, and Prussia; and in 1852, by a convention entered into at Paris, all the continental states then maintaining telegraphic systems joined in a system of regulations which improved the service but fell short of the uniformity and regularity which their interests demanded. Finally, at a conference in Paris, in 1865, attended by the representatives of twenty states, the present union was founded, the arrangement being embodied in a convention and a set of administrative regulations.[15]

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[11] Sayre, *op. cit.*, 13. The International Office of Public Health at Paris is of a similar nature.

[12] *Ibid.*, 38 ff., on this and other unions of similar type, especially the European River Commissions and the International Sanitary Councils.

[13] Sayre, *op. cit.*, 131.

[14] On the Wireless Telegraphic Union see Woolf, *op. cit.*, 211 ff. See also Reinsch, *op. cit.*, 19–20.

Conferences of the member states are held from time to time to consider matters of general policy, such as revision of the convention and regulations; and an administrative bureau is maintained at Berne, Switzerland, as the permanent central organ of the union. Illustrative of the principles established by the convention are the following: The secrecy of telegraphic correspondence is safeguarded; telegrams are divided into classes for purposes of regulation; special wires are to be used for the international service; provision is made for the partial or entire suspension of the telegraphic service when deemed necessary; and a definite basis is laid down for international tariffs of charges. The union is now composed of some sixty-four states, including nearly all the important countries of the world except the United States.[16] Under the radiotelegraphic convention of 1906 the bureau of the Telegraphic Union acts as the bureau of the Radiotelegraphic Union.[17]

River Commissions — Air Navigation

Of the so-called River Commissions, the European Danube Commission, created in 1856, has been the most famous. Composed of representatives of the Great Powers of Europe, it has exercised important and increasing powers in regulating the navigation of the Danube. It is given authority to maintain and improve the navigability of the lower Danube; it fixes and collects tolls, makes regulations for the navigation of that part of the river under its jurisdiction and penalizes violations thereof, licenses and controls tugs, lighters, and pilots, and exercises other broad powers of supervision. Its personnel and works have been neutralized, and it enjoys the right to have its own distinctive flag. A distinguishing feature of its procedure is that in all ordinary administrative matters it acts by majority vote. Unanimity is required, however, on fundamental matters of principle. The work of this Commission has been highly successful. It has vastly improved navigation of the lower Danube by shortening and deepening the channel of the river and by increasing the safety of freight carriage, has greatly reduced the tolls, and has developed a modern port at the mouth of the river.[18]

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[15] These are called, technically, the *règlement*.

[16] On this union see Woolf, *op. cit.*, 205 ff.; Reinsch, *op. cit.*, 15 ff.

[17] The Convention of 1906 was revised at a conference held in London in 1912, and again at a conference in Washington in 1927. On the work of the latter conference see 22 *A. J.*, 28 (1928).

In 1922 the International Commission for Air Navigation was set up in Paris, under the Air Convention of 1919. Its duties include, among other things, that of collecting and communicating to the contracting states information of every kind concerning air navigation, and such information relating to wireless telegraphy, meteorology, and medical science as may be of interest to air navigation. Further duties are to insure the publication of maps for air navigation, and to give its opinion on questions which the member states, now numbering more than twenty, may submit for examination. The Commission has dealt successfully with a large number of questions of importance to air navigation.

Origin of the Universal Postal Union

The Universal Postal Union has been called the first League of Nations. In view of its great importance, and the success with which it has met a complicated situation, it is the best illustration of this type of organization. With the growth of industrialism during the first half of the nineteenth century, and the commercial expansion due to quickened means of transportation, the postal business of the world grew by leaps and bounds. At first in private hands, it was gradually taken over by the governments, the service of each state being operated as an independent unit and with slight administrative relation to other services.

The result was delay and confusion. Rates were high, variable, and difficult to ascertain, being made up of a payment to the country of origin, another to the country of destination, another to each country covered by the route, and still another for sea transit.[19]

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[18] See Sayre, *op. cit.*, 38 ff., and Reinsch, *op. cit.*, 74; also E. Krehbiel, "The International Commission of the Danube: An Experiment in International Administration," *Int. Con.*, No. 131 (Oct., 1910); and G. A. Blackburn, "International Control of the River Danube," XXXII *Current History*, 1154 (Sept., 1930). On the similar Rhine Commission see Sayre, *op. cit.*, 131 ff.

[19] Woolf, *op. cit.*, 186 ff.

Rates varied with the route taken by the letter. For example, between the United States and Australia there were six different routes requiring postage, respectively of five, thirty-three, forty-five, and sixty cents and a dollar and two cents per half ounce.[20] For Greece, Turkey, Egypt, or Hongkong five routes with varying rates were possible; four for Germany and Switzerland, and three for Denmark, Holland, Sweden, and Norway.[21]

The accounts necessitated by such varied and numerous charges were complicated and expensive, differences in weights and currencies confusing, and delays unavoidable — the whole constituting an intolerable situation. At first a number of conventions were entered into by groups of two or more nations. In 1862 the United States was party to eight separate postal conventions.[22] Some uniform system of regulating this important business was seen to be highly desirable if not imperative. Under the official initiative of the United States a conference of fifteen states met at Paris in 1863 and laid down a set of principles covering the main features of an international system; but it was not until 1874, at a conference in Berne, Switzerland, that the convention was concluded which set up the General Postal Union, which shortly became the Universal Postal Union. Subsequent conferences have modified the original system in details, but its essential features remain unchanged.

The Postal Union is more nearly universal than any other existing international organization. It embraces practically the entire civilized world, and serves a population of nearly two billions of people.[23] Not only may independent states become members, but in certain designated cases the colonies, protectorates, and dependencies of member nations are considered as forming a single postal administration for purposes of voting and financial contribution. Thus the dependencies of the United States other than the Philippines form a single administration, and the Philippines another.[24] There are now in the union some eighty-five postal administrations.

Organization of the Postal Union

The constitution or treaty basis of the union is the Berne convention of 1874 as revised by successive congresses. It prescribes the organization and powers of the union and its general principles of administrative procedure. It is supplemented by a "*règlement*" or set of regulations, which work out the administrative provisions of the convention in greater detail.

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[20] Reinsch, *op. cit.*, 21.

[21] J. F. Sly, "The Genesis of the Universal Postal Union," *Int. Con.*, No. 233 (Oct., 1927).

[22] Sly, *op. cit.*, 11.

[23] Bulletin published by the Bureau of the Union at the end of the year 1926; since which time there have been several accessions to the union.

[24] *Convention*, Art. 8.

The method of amending the convention and regulations is interesting and in some respects unique. The Congress of the union has plenary power to propose amendments, which pass to the member governments for ratification. Provision is also made for amendment during the five-year interval between conferences. Any postal administration may propose amendments, its proposals being sent out by the bureau to be voted on by mail. The vote whereby a proposal may be adopted varies with its subject matter. If it concerns certain specified provisions of the convention or regulations, such, for example, as those concerning the organization of the union, a unanimous vote is necessary. As to certain other provisions less fundamental, a two-thirds rule is sufficient; while if it deals with the interpretation of the provisions of the convention and its regulations a simple majority vote is sufficient. These provisions whereby the members consent to be bound by votes falling short of unanimity are particularly significant because they are among the earliest examples of the waiver by sovereign states of the unanimity rule.

The Congress itself decides by majority vote on amendments proposed therein; and while according to the letter of the convention no state is bound thereby without a separate ratification, in practice the right of a state to refuse ratification hardly exists. The decisions of the Congress are acted upon by the postal administrations whether they are formally ratified or not, and such is the importance of the service rendered by the union that objecting members are virtually forced to acquiesce.[25]

The organization of the union consists of a Congress and an administrative Bureau. The Congress is the general deliberative body of the union. Subject to such right of ratification as the administrations enjoy, it has final determination of the organization, powers, and policies of the union; it meets every five years. Each administration is represented in the Congress by one or more delegates, and is entitled to one vote. It is a diplomatic body — that is, technically its acts must be ratified by the several administrations; but an act is valid as to all administrations which ratify, even though some do not.[26]

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[25] For an illustration of this see Woolf, *op. cit.*, 194–195, and Sayre, *op. cit.*, 24–25.

[26] *Convention*, Art. 13.

The permanent administrative agency of the union — that feature which especially characterizes this class of international organizations — is the Bureau. Its office is at Berne, Switzerland, and it is under the supervision of the Swiss postal administration. Its duties are numerous. In general, it is the organ of contact and consultation as between the several administrations. More specifically, its functions are to gather, coördinate, publish, and distribute information concerning the international postal service; to advise with respect to questions in dispute as between administrations, on request, and to perform the necessary secretarial work. It also prepares the agenda or programs of congresses and special conferences. An important part of its work is to publish a postal journal in four languages, and a collection of postal data based on reports which the administrations are required to submit, dealing with various matters specified in the regulations. It is also required to make an annual report on its administration. Thus the postal authorities of the various administrations are kept fully informed on all postal matters throughout the world-wide area served by the union.[27]

The expenses of the union are met by contributions from the administrations, levied on an interesting basis. The entire membership is divided, by the Congress, into seven classes, the administrations in each class being assessed a specified number of units of the entire budget. Thus the administrations in the first class contribute twenty-five units, those in the second class twenty units, and so on down to the seventh class, where the assessment is one unit.[28] An important article of the convention provides for the settlement by arbitration of all disputes concerning the interpretation of the convention or the responsibility of any member.

General Functions of the Union

What are the broad functions of the union? In the first place the convention guarantees freedom of transit of postal matter throughout the territory of the union; and if any country fails to make good this guaranty within its territories, the other administrations have the right to suppress the postal service with such offending country. Again, the union fixes and maintains uniform rates of postage throughout its entire extent, regulates the matter of fees for the registry of letters, and provides for prepaid reply coupons, which are issued in all the administrations of the union and are exchangeable in any administration for postage on the reply letter. The convention and regulations deal with a variety of other matters, such as the weight and size of postal matter, special delivery, and registry.[29] All postal fees are collected by the sending administration, which pays prescribed transit charges, based upon weight and distance, to each of the countries traversed. The amount of foreign postal matter originating in each administration is ascertained on the basis of data compiled every five years.[30]

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[27] On the duties of the Bureau see *Convention,* Art. 23.

[28] The Stockholm congress of 1924 fixed the ordinary expenses of the bureau at not to exceed 300,000 Swiss francs per year. This scheme of apportionment is of special interest because it was the plan embodied in the Covenant of the League of Nations for apportioning the expenses of the League. The League has since adopted another plan. See Ch. XXI, Sub. VIII.

The convention recognizes the right of the administrations to enter into treaties establishing special postal arrangements between them, provided such arrangements are not inconsistent with the purposes of the union. A number of such restricted unions have been formed, among them unions for the exchange of money orders, for a parcels post service, for the collection of payments through the postal service, and for the transmission of packages of declared value registered and insured. All these restricted unions use the international bureau as their agent.[31]

IV. UNIONS TO PROMOTE INTERNATIONAL ECONOMIC INTERESTS — THE INTERNATIONAL INSTITUTE OF AGRICULTURE

The second group of unions includes those dealing with economic interests. The more important unions in this group are the International Bureau of Weights and Measures, referred to briefly as the Metric Union (1875), the Union for the Publication of Customs Tariffs (1890), the International Labor Office (1900),[32] the International Sugar Union (1902), the International Institute of Agriculture (1905), and, finally, the International Labor Organization established under the Peace Treaty of 1919.[33] The Labor Organization is fully discussed in Chapter XXXV.

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[29] See Reinsch, *op. cit.,* 24 ff., and Woolf, *op. cit.,* 190 ff.

[30] Some idea of the enormous volume of international postal business supervised by the union may be gained from its published statistics. For example, in 1924, the international postal service of four countries totalled, in millions of pieces, as follows: United States, 349; Great Britain, 202; Germany, 191; France, 131.

[31] Reinsch, *op. cit.,* 27.

[32] This organization is referred to in sketching the antecedents of the International Labor Organization.

[33] Other unions in this group are: The Union on Railway Freight Transportation in Europe (1878), and the Unions for the Protection of Industrial, Liter-

The International Metric Union

The Metric Union was established to secure the adoption and maintenance internationally of uniform standards of weights and measures — a matter of great importance to commerce and science. Commercial transactions are seriously inconvenienced by differences in such standards, while the effective collaboration of scientists in the different countries becomes impossible unless, in their experimentation and writings, they may express their weights and measures in terms having precisely the same meaning.

At a conference held in Paris, in 1875, a convention was adopted which set up a bureau of weights and measures, located at Sèvres, near Paris, under the supervision of a committee representing the member states. This bureau preserves the original standards of measurement, and on request furnishes governments and scientific institutions accurate copies thereof. Thus a bar representing the meter as a measure of length is kept by the bureau under such conditions as to insure its absolute accuracy; and the government of the United States, for example, may have its official standards verified by comparison with this international standard. At intervals of six years general conferences of the member states, which now number thirty or more, are held for the discussion of scientific methods for perfecting the accurate reproduction of standards of measurement.[34]

The International Sugar Union

The International Sugar Union, established under what is known as the Sugar Convention of 1902, is interesting, not so much for the international importance of its purposes as for the unusual scope of the administrative powers conferred upon it. Its specific purpose was the abolition of the sugar bounties which the sugar-producing countries of Europe maintained during the latter half of the nineteenth century. A permanent commission was set up under the convention to which fourteen states ultimately adhered. In brief, by this convention the member states agreed to abolish sugar bounties, not to levy import duties on non-bounty-fed sugars beyond a pre-

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ary, and Artistic Property (1880). On the Tariffs Union see Reinsch, *op. cit.*, 41. On the Unions for the Protection of Industrial, Literary, and Artistic Property, see address by M. Ostertag, Director of the Bureaus, before the European Conference of American Professors of International Relations at Geneva, Aug. 30, 1926, *Michigan Law Journal*, Vol. XXV, No. 2.

[34] Reinsch, *op. cit.*, 35–36.

scribed maximum, and to levy a countervailing duty on importations of bounty-fed sugar.

To carry out this agreement a permanent bureau composed of one delegate from each state was created, located at Brussels, and endowed with extraordinary powers. Its chief duties were to conduct investigations as to sugar bounties and the export trade, and to authorize the levy of an increased tax by any member state against importations from another state which resulted in injury to its own sugar industry, to an amount at least equal to the bounties imposed by the competing state.

The unusual feature of the Commission was its power to take this drastic action by simple majority vote. Of this innovation in this type of organization Reinsch remarks:

> The Sugar Commission is the only international organ which has a right, through its determinations and decisions, to cause a direct modification of the laws existing in the individual treaty states, within the dispositions of the convention.[35]

Origin of the International Institute of Agriculture

In the second group of international unions — those serving economic purposes — perhaps the most important organization is the International Institute of Agriculture. It may be taken, also, as representative of the type of union chiefly devoted to the gathering, coördination, and dissemination of information. The Institute of Agriculture was established in 1905. David Lubin of California first conceived of such an institution as a means of promoting the interests of the farmers of the world. The institution he proposed, however, was broader in scope than that which finally came into existence, for he contemplated not only a union to gather and distribute all kinds of information about agriculture, but also an institution to protect both producer and consumer by the international regulation of freight rates on food products.[36]

After discouraging efforts to interest various governments in his proposals, he finally enlisted the coöperation of the King of Italy, through whose good offices an international conference was held in Rome, in 1905. This conference framed the convention which is the fundamental law of the Institute. More than fifty states are now members of it, and their dependencies bring the number of political units represented up to over seventy. Thus the Institute is broadly international; it represents four-fifths of the land area of the world and over ninety per cent of its population. The only important country not now actively coöperating is Soviet Russia, which, although nominally an adhering nation, is not represented in the work of the Permanent Committee. The seat of the Institute is Rome, where it occupies a palace erected for it by King Victor Emmanuel, who also provided an initial endowment for its support.

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[35] Reinsch, *op. cit.*, 49, 51. See also Sayre, *op. cit.*, 117 ff. for full discussion; and Woolf, *op. cit.*, 246. This convention was denounced, or terminated, in 1920.

[36] Woolf, *op. cit.*, 251–252.

Functions of the Institute

The Institute derives all its powers from the convention of 1905, which sets forth its general purposes and outlines its formal organization. These purposes are declared to be as follows:

> (a) To collect, carefully examine and publish with the least possible delay statistical, technical and economic information with regard to farming, crop and live stock production, trade in agricultural products and the prices current on the different markets, to make generally known any new diseases of crops that may have appeared, and, where possible, any effective measures for their control;
>
> (b) to study questions concerning agricultural coöperation, insurance and credit in all their forms; to collect and publish information on the subject of agricultural coöperation, credit and insurance; to indicate the wages paid for farm work;
>
> (c) to submit, for the examination and approval of the governments, measures for the protection of the common interests of farmers.

This declaration of purpose, which is expressly limited to the international sphere, clearly contemplates two main functions of the Institute: That of collecting and publishing data relating to agricultural production and distribution in all its branches, and that of utilizing these data as a basis of legislative proposals to the various governments dealing with measures of common interest to agriculture.

Into the former field it has fully entered; in the latter it has taken comparatively little initiative, although its power to do so is plenary. It has so far initiated two conventions, and an agreement between certain countries of North and Equatorial Africa. In respect to this power of independent initiative, it stands on the same footing as the League of Nations and the International Labor Office, having authority to summon conferences for the drafting of conventions which, on due ratification, would become international statutes. There is considerable feeling within the Institute that it should pursue a more vigorous policy in the field of international legislation.[37]

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[37] See on this point the report of the President of the Institute, G. de Michelis, to the General Assembly of 1926, 46 ff.

Organization and Special Activities of the Institute

The general organization of the Institute consists of two main bodies — a General Assembly, which exercises supreme authority within the limits prescribed by the convention; and a Permanent Committee which constitutes the executive agency of the Institute. The Assembly meets as a rule every two years at the seat of the Institute. It is made up of delegates appointed by the governments of the member states, each state having one vote, and unanimity being required for all decisions.

The Permanent Committee, on which each state is represented by a single delegate, meets several times during the year. Under the direction and subject to the supervision of the General Assembly, it carries out the resolutions adopted by the Assembly, and prepares new proposals for submission thereto. Within the framework thus established by the convention a rather elaborate organization has been set up, consisting of consultative and collaborative bodies, a general secretariat, and certain bureaus dealing with major aspects of the work of the Institute. The consultative or advisory bodies are the International Scientific Council, the Permanent Commission of Agricultural Associations, and the Agricultural Advisory Committee, the last-named body being formed by agreement with the International Labor Office for the joint consideration of questions relating to agriculture in which the Institute, or the Labor Office, or both, may be interested. It is composed of members of the Permanent Committee and of the governing board of the International Labor Office.

The administrative organization of the Institute comprises the General Secretariat, the Bureau of Agricultural Science, and the Bureau of Economics and Social Questions. The General Secretariat handles all the routine administrative business of the Institute. The library of the Institute, comprising some 180,000 volumes and 4000 journals, is attached to the General Secretariat. A Bureau of General Statistics has been organized, having for its function the compilation, study, and publication of information and statistics relating to the various aspects of agriculture. President de Michelis has stated the three essential and closely allied aims of the Bureau as follows:

> (1) To encourage the adhering states to collect, complete and unify their agricultural statistics; (2) to collect and promptly make known the information available regarding the production, trade and prices of agricultural products, (3) to handle the statistics and documentation in such

a way as to make it possible to supply for the different products tabulated surveys of the state of the market, its tendencies and prospects.[38]

Along these lines the Bureau has done valuable work, especially in setting up uniform statistical standards for the use of the various governments, so as to afford a scientific basis for the improvement and unification of the statistics of agricultural production. The aim of the Institute is to publish the data collected as rapidly as possible, thus exercising a regulative function as regards the movement of prices in the international market, for the benefit of the agricultural classes and of consumers.[39] The Bureau publishes monthly what is called the *International Crop Report and Agricultural Statistics,* embodying the statistical information supplied by the various governments. Four editions of this publication appear simultaneously in French, English, Italian, and Spanish. The material covered by it is made available by telegraph to any government which desires it. It also publishes the *International Year Book of Agricultural Statistics,* a work based upon extensive and detailed inquiries in the field of agricultural statistics, and a standard work of reference in the field of agricultural production and distribution.[40]

The Bureau of Agricultural Science is concerned primarily with collecting and abstracting periodical information on agricultural science in all countries. It undertakes to gather up the results of scientific agricultural study and research in all parts of the world, and make it available to students and investigators, thus coördinating and supplementing agricultural science as it is gradually worked out in the laboratories, the schools of agriculture, and the experiment stations of the different countries. Its chief publication is the *International Review of the Science and Practice of Agriculture,* issued quarterly in five languages.[41]

The Bureau of Economic and Social Questions covers a wide field, among its activities being the collection, study, and publication of information on general rural economics in all countries, systems of land tenure, economic and trade organization, the study of questions concerning agricultural coöperation, insurance and credit, and of economic and social activities relating to agriculture, inquiries and monographs on economic and social questions — in a word, the consideration of measures for the protection of the common interests of the agricultural classes and the improvement of their position.[42]

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[38] President de Michelis, *op. cit.,* 16.

[39] *Ibid.,* 17.

[40] *Ibid.,* 43–44.

[41] *Ibid.,* 18–19, 42, 43.

[42] *Ibid.,* 22, 43.

Thus the Bureau stresses the international aspects of economic problems, recognizing that it is impossible to deal with such problems in any comprehensive way except on international lines. This fact has been fully recognized in recent years, especially since the World War, as evidenced by an increasing number of conferences for the consideration of economic problems from the international point of view. It publishes quarterly the *International Review of Agricultural Economics.*

Besides its regular publications noted above, the Institute has embodied the results of special inquiries and studies too extended for treatment in its reviews or bulletins, in monographs and special publications. These inquiries range over a wide variety of subjects. During the past few years the Institute has taken the initiative in calling international conferences, among them being the World Forestry Congress and the Conference of Experts on Chemical Fertilizers, in 1922, and a Conference on Soil Science and Wheat Growing.

The Institute of Agriculture, then, is an international organization to promote the general interests of agriculture, the great basic industry. Its founders assumed, and its development has demonstrated, that within certain broad limits, the problems of agriculture, with their social and economic implications, are identical the world over, and that these problems can be dealt with only by coöperative effort through an agency whose jurisdiction and activities are coterminous with the interests involved. The Institute has been discussed in some detail, not only because of its intrinsic importance, but because it serves well to illustrate the international movement in the field of administration.

V. UNIONS DEALING WITH HEALTH, AND WITH SOCIAL, HUMANITARIAN, AND SCIENTIFIC INTERESTS

A third group of unions includes those concerned with the public health, chief among these having been the International Sanitary Councils at Tangier, Constantinople, and Alexandria, and the present International Office of Public Health in Paris (1907).[43] The Paris Office, now functioning in close coöperation with the Health Organization of the League, has for its main purpose the collection of documents and information regarding public health, and bringing them to the attention of the member states. It publishes a monthly bulletin containing public health statistics and other information of general interest. It is under the direction of an International Committee composed of delegates from all the member states, of which there are nearly fifty at the present time.[44]

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[43] Other international administrative bodies in this group have been: The Council of Sanitation for the Danube (1881), the International Sanitary Union (1892), and the Pan-American Sanitary Convention (1902). On the Sanitary Councils see Sayre, *op. cit.*, 52 ff.; Reinsch, *op. cit.*, 57 ff.; Woolf, *op. cit.*, 239 ff.

Still another group has had to do with social and humanitarian interests, such as the African slave trade, prison reform, and the opium and liquor traffic. Included in this group are the Union for the Suppression of the African Slave Trade (1890), the Union for the Regulation of the African Liquor Traffic (1890), and the International Opium Commission (1909). Finally, aside from commissions and unions for special and local purposes, a remaining group embraces those organized for scientific purposes, among them being the International Geodetic Association (1864), the Pan-American Scientific Congress (1907), and the Central Bureau for the International Map of the World (1913).[45]

VI. ORGANIZATION OF INTERNATIONAL ADMINISTRATIVE UNIONS

The general organization of these unions has been touched upon in the foregoing review of a few typical examples; something more should be said on the subject, however. It has already appeared that the union comes into existence by virtue of a convention, or treaty, framed at an international conference and ratified, like any treaty, by the member states. This convention is the legal basis of the union — its constitution. The conference often adopts, also, a *règlement*, or set of regulations, which elaborates the administrative details of the union; it also provides for a permanent bureau as its administrative organ.

The distinction between the bureau and the conference, in character and function, is basic and should be clearly understood. In the conference is vested the fundamental power of the union; it is a constituent, or constitution-making body, performing no administrative functions whatever. The bureau, on the other hand, has no constituent power whatever — that is, no power to revise or amend the convention. As the administrative agency of the union it is obedient to the will of the conference as expressed in the convention.

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[44] For an interesting historical sketch of the conditions which necessitated these international health organizations see Woolf, *op. cit.*, 221 ff.

[45] The Metric Union referred to above might be placed here. On this class of unions see Reinsch, *op. cit.*, 67 ff.

In some cases, as in the Institute of Agriculture, for example, it is given power to draw up or amend the regulations, but in doing so it must conform to the provisions of the convention. Roughly, then, the relations between the conference and the bureau are those existing between a national constitution-making or legislative body and the executive department of government. The conference is a diplomatic body meeting periodically as the repository of the ultimate power of the union, its work, however, being subject to ratification by the member states; the bureau is a small permanent body charged with administrative duties.

Besides these two essential organs of the union a third is sometimes provided for, called a Commission.[46] Its function is to supervise the work of the bureau, and to exercise a measure of control over its expenses. Sometimes, also, it is empowered to prepare administrative regulations, thus acting in a quasi-legislative capacity. These commissions are made up of representatives of the member states. Sometimes all the treaty powers are represented; [47] again, it may be made up of a smaller number elected by the conference. It is not usually governed by the rule of unanimity. The commission, in fact, represents a rather recent development in the organization of unions. In the older bodies the power of control later vested in the commission was exercised by the government of the country wherein the union was located. Thus, as already noted, the Swiss postal administration supervises the work of the Universal Postal Union at Berne.

Administrative Handicaps of the Union

Some reasons have already been suggested for the failure of certain unions in the past, one being that the member states have been unwilling to endow them with sufficient power. Closely associated with this source of weakness are other, and perhaps more general, defects of organization, or procedure. As in diplomatic bodies generally, the traditional rule of unanimity in voting is usually prescribed, both in conference and bureau. So also, it is generally established practice to give each state the same voting weight as every other state. These principles are discussed at length elsewhere; it is enough to indicate briefly their relation to the work of international administrative bodies, and to refer to a few instances where they have been modified.[48]

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[46] Reinsch, *op. cit.*, 153.

[47] As in the Pan-American Union, discussed below, Sub. VII.

[48] On this subject see valuable article by Denys P. Myers on "Representation in Public International Organs," in 8 *A. J.*, 81 (1914).

Administration is concerned primarily with the application of established legal or conventional rules to specific states of fact. It involves the power of decision on the basis of ascertained or ascertainable data, rather than the laying down of principles of conduct or procedure. It is arguable, then, that reasons which might justify the rule that no state may be bound without its consent in conferences of a diplomatic character, where matters of principle are under consideration, have little or no application to administrative processes. The general powers of these administrative organs are carefully defined and limited in the conventions creating them; it is the work of administration to exercise the powers so defined.

At any rate, to impose the rule of unanimity upon an administrative body is to lessen materially its prospect of usefulness, to say the least, and ordinarily with no compensating advantage to the states concerned. It is a notable fact in this connection that the unanimity rule has been dispensed with in some unions, under pressure of the necessity of making quick decisions. This is true of the International Sanitary Commission and the Danube and Rhine River Commissions; and in the Universal Postal Union, where the absence of a prescribed voting rule for the Congresses raises a presumption that the ordinary unanimity rule would prevail, administrative necessity has virtually established the majority rule, as has been noted. However it may be with international bodies of a diplomatic character, it is safe to say that international administrative bureaus will more and more recognize the majority vote as the most practicable way of reaching decisions.[49]

A somewhat analogous situation is presented by the rule of voting equality. Granted that states are of greatly unequal importance in international affairs, and that therefore their practical interest in the work of administration differs accordingly, a rule that gives equal voting power to all members of the union would seem to be unfair and impracticable; and yet it prevails in most unions. Its effect is unfortunate in at least two respects: First, it tends to deter the larger powers from associating themselves with the smaller in administrative work, under a rule of procedure that fails to give them due voice therein; and second, the union once formed, it tends to create friction in the common councils, the more important members chafing under a rule that places disproportionate power in the hands of those of lesser importance.[50]

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[49] On the unanimity requirement generally see Sayre, *op. cit.*, 150 ff.

[50] *Ibid.*, 161.

However it may be in diplomatic bodies, the equality rule is of doubtful utility in the practical work of administration. It has been generally retained, either because the traditional procedure has been too strongly entrenched to be set aside without defeating the organization of the union, or because it would work slight injustice, due to the fact that the member states were not markedly unequal in practical weight.[51] It has, however, been modified in two or three conspicuous cases. In the International Institute of Agriculture, the member states are divided into five groups making unequal financial contributions to the support of the Institute. Voting power is made roughly proportional to the number of units of assessment paid by a state, and each state decides as to the group to which it shall belong. This plan was also adopted by the International Sanitary Convention of 1907. It does not, of course, necessarily proportion voting power to actual weight, for conceivably a small state might elect to pay a large assessment for the sake of the increased voting privilege; but in practice it largely meets the objection to the equality rule.[52]

Another plan was adopted by the Universal Postal Union. The convention declares that each state shall have one vote; but it further provides that certain colonial possessions of member states shall be treated as separate postal administrations and so entitled to votes. For example, the United States proper has one vote, the Philippine Islands one, and the other insular possessions of the United States together one — a total of three votes for the United States. In this way several colonial powers increase the number of their votes. A similar provision appears in the convention of the Wireless Telegraphic Union of 1904.[53] No more than the unit-of-assessment rule, does this plan result in a perfectly fair distribution of voting power, but in a measure it corrects the equality rule. So also does the rule adopted in the Postal Union whereby the Great Powers are given a larger representation on three important committees which largely control the work of the conferences.

Administrative Unions and the League of Nations

The foregoing modifications of the unanimity and equality rules indicate a tendency, beginning to be observable in international government generally, to break away from traditional methods of procedure when they clearly stand in the way of attaining desirable ends.

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[51] Sayre, *op. cit.*, 162.

[52] *Ibid.*, 163–164.

[53] *Ibid.*, 163.

They are interesting, also, for the light they throw upon the similar problems involved in the procedure of the League of Nations.

The foregoing review of the international administrative function has concerned the origin, development, and work of administrative unions organized to deal with special interests of one kind or another. These unions, as already seen, have not been uniformly successful; but taken as a whole they have demonstrated, not only the feasibility and the utility, but also the necessity, of this mode of international coöperation. The organization of the League of Nations did not materially affect these public unions; they continued to function as before, but were given the right to come under the direction of the League by consent of the parties to the treaties under which they exist.[54]

The Covenant further provides that " all such international bureaus and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League." [55]

The Council of the League has interpreted " direction " to mean " the exercise by the League of a general mission in regard to the examination and coördination of the manifestations of international life." This implies that the League should be fully informed as to the work done by the institutions coming under its direction; should be able to call upon them whenever their services may be of technical value to the general work of the League, and that they should be subject to general supervision and coördination.[56]

The new institutions coming more or less fully under this provision of the Covenant include the International Institute of Intellectual Coöperation in Paris, the Institute for the Unification of Private Law in Rome, and the Educational Cinematographic Institute, also in Rome.

Under the peace treaties the League itself is charged with important administrative duties, which will be discussed in Part VIII. The League experiments in international administration, which are as interesting and instructive as any undertaken before the War, are entitled to careful consideration by students of international government.

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[54] Some four bureaus have so far availed themselves of this provision. Closer relations have been proposed between the League and the International Institute of Agriculture. See *Monthly Summary of the League of Nations* for July, 1928, p. 178, for the inauguration of the International Institute for the Unification of Private Law in Rome.

[55] *Covenant*, Art. XXIV.

[56] See *Monthly Summary,* cited above, 176–177. For the action of the 9th Assembly in approving and commenting on this interpretation by the Council, see *Monthly Summary* for October, 1928, 267–268. This action was taken in connection with the approval by the Council of the draft statutes of the International Educational Cinematographic Institute in Rome.

VII. THE PAN-AMERICAN UNION

The Pan-American Union differs materially from the administrative organizations described above; but as a conspicuous example of international coöperation in the general field they occupy, it is of great interest to the student of international relations. In two essential respects it is to be distinguished from other unions: First, in that its membership is definitely and exclusively regional, embracing only the republics of the Western Hemisphere, not including Canada; and second, in the broad scope of its avowed purposes.

The Pan-American Union is an organ of what is known technically as "The Union of the American Republics." To this union of states belong the twenty-one republics of the New World, whose governments enjoy, as of right, representation both at the conferences of American states held periodically, and in the Pan-American Union. The origin of this inter-American union is to be found in an organization created at the first Pan-American conference held in Washington in 1899–1900, under the name of the "Commercial Bureau of the American Republics." The functions of this Bureau, which was placed under the supervision of the Secretary of State of the United States, were confined to the compilation and publication of data relative to the productions, commerce, laws, and customs regulations of the several countries.

These functions were somewhat enlarged at the Second Pan-American conference in the City of Mexico, in 1902, and the administration of the Bureau transferred to a governing board made up of the diplomatic representatives of the member states accredited to the government of the United States, the Secretary of State of the United States being made chairman of the Board.

The third conference of American States, held at Rio de Janeiro in 1906, still further extended the scope of the interests committed to the Union. Its original character was purely commercial; it was now made, in addition, an organ of coöperation between the American Republics, and a permanent committee was charged with the duty of carrying into effect the resolutions and conventions adopted at the international conferences of American States.

Among these coöperative functions specified were: Compiling and classifying the treaties between the American Republics, and between them and other states, and coöperation in the ratification of the resolutions and conventions adopted at the conferences; preparing reports on educational matters, and serving as a permanent committee of the Pan-American conferences. The Bureau was placed under the administrative supervision of a committee of five, headed by the Secretary of State of the United States.

At the fourth conference, held at Buenos Aires in 1910, the name of the organization was changed to the Pan-American Union, and it was directed to compile and publish information on the legislation of the American Republics. So also, to ensure a full representation of member states in the Union, this conference by resolution provided that in case a state had no diplomatic representative at Washington, it could confer representation on another member of the Board.

Reorganization at the Fifth Pan-American Conference

Still more important changes in the organization and functions of the Union were made at the fifth Pan-American conference held at Santiago in 1923. Up to this time the Secretary of State of the United States had been, *ex officio*, chairman of the Board; it was there provided that the chairman and vice-chairman should be elected by the Board — a change suggestive of the desire to place all states represented in the Union on a basis of equality in respect to its organization. It was further provided that states having no diplomatic representatives accredited to the government of the United States might appoint special representatives on the Governing Board, instead of conferring representation on some other member of the Board as provided at the previous conference.

Of even greater significance was the action of the 1923 conference in broadening the scope of the coöperative work centering in the Union, through the organization of four permanent committees to coöperate with the Union in matters relating to the development of commercial relations, the international organization of labor, public health and hygiene, and the promotion of intellectual coöperation on the American continent.

Thus far the Union had been the creation of the successive conferences of American States as evidenced by resolutions adopted from time to time prescribing its organization and duties; it never had been given a conventional basis, or constitution. The fifth conference took steps to change this rather anomalous situation by directing the Governing Board to formulate a convention as the definitive and permanent legal basis of the Union, to be considered by the sixth conference. This was done, and with the project thus proposed before it, the sixth conference at Havana, in 1928, adopted a "Convention of the Pan-American Union."[57]

Briefly summarized, this convention constitutes the Pan-American Union, under the direction of a Governing Board and with its seat in the City of Washington, one of the organs of the Union of the American States. On the Governing Board each state enjoys representation, as of right. Another organ of the Union of States is the International Conference of American States, which shall meet at periodical intervals not longer than five years.

The Governing Board of the Union is composed, not of diplomatic representatives, as formerly, but of such representatives as the governments may appoint. This change was designed to give the member states representatives on the Board untrammelled by any diplomatic situations that might arise among them. The chairman and vice-chairman of the Board are elected annually. The administration of the Union is in charge of a Director-General appointed by the Board; and its expenses are paid by the several members, their quotas being determined proportionately on the basis of population.

General Functions of the Pan-American Union

The functions of the Pan-American Union, aside from those devolving upon it as a Permanent Commission of the international conferences, whose work it furthers by way of carrying out resolutions and promoting the ratification of treaties and conventions, are mainly summed up in three paragraphs of Article VI of the convention:

> 1. To compile and distribute information and reports concerning the commercial, industrial, agricultural, social and educational developments, as well as the general progress of the American republics.
> 2. To compile and classify information referring to the Conventions and Treaties concluded among the American republics and between these and other states, as well as to the legislation of the former.
> 3. To assist in the development of commercial, industrial, agricultural, social and cultural relations in the study of the problems of labor, and of a more intimate mutual acquaintance between the American republics.

It is thus seen that the work of the Pan-American Union, like that of other unions of the type of the International Institute of Agriculture, is chiefly concerned with the compilation and distribution of information — a most valuable if non-spectacular function, as has been pointed out. In a further provision of Article VI of the convention, the conference profited by the experience of the League of Nations in dealing with questions which require expert investigation and advice. Paragraph 6 of this article empowers the Governing Board to promote the meeting of international conferences of experts to study problems of a technical character of common interest to the members of the Union.

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[57] For the text of this convention see a "Survey of the Sixth International Conference of American States," by James Brown Scott, *Int. Con.*, No. 241 (June, 1928) Appendix IV; also 22 *A. J. Official Documents,* 161 ff. (July, 1928).

The Governing Board is charged with the duty of organizing the Union in such administrative divisions or sections as may be deemed necessary to carry out the purposes of the institution. The draft convention prepared by the Governing Board, referred to above, included provisions for several divisions charged with specific duties — on intellectual coöperation, of commerce, industry, and economic resources, of finance and communications, of statistics, of the international conferences of American States, and of publications. This rather elaborate scheme of organization, which may be taken to embody the ideas of the Governing Board and as foreshadowing its action under the provision referred to above, indicates a purpose to extend the work of the Union into broad fields of international coöperation. Indeed, the development of the Union, as the result of forty years of experience, from a mere Bureau to promote commercial relations to a Union empowered to deal with the comprehensive interests entrusted to it in the convention of 1928, may be taken as fairly indicative of the progress made in the whole field of international coöperation.

Finally, it should be observed that the Pan-American Union has developed solely along non-political lines. Some of its members have at times advocated measures that would give it a more thoroughly international character. This sentiment was in evidence at the Santiago conference of 1923, where the proposal was brought forward to expand or transform the Pan-American Union into something like an American League of Nations.[55]

A consideration of the reasons which have prompted this attitude on the part of many Latin Americans, and have led the United States, in particular, to oppose it officially, would involve the whole history of the relations between the United States and Latin America for a century. Enough to say that the proposal referred to was not seriously considered at Santiago, nor was it brought forward, openly at any rate, in the consideration at Havana of the reorganization of the Pan-American Union.

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[55] On this point see G. H. Blakeslee, *The Recent Foreign Policy of the United States* (1925), 167 ff.

That the Union has done valuable work in promoting good will and coöperation between the nations of the Western World, is unquestioned. Of late the inclusion of Canada in the Union has been quite vigorously advocated in some quarters; and on the basis both of geographical propinquity and mutual interests there seems to be no reason why she should not take her place beside the other American States.

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Part V

THE INTERNATIONAL LEGISLATIVE FUNCTION

CHAPTER XIV

TREATIES AND TREATY-MAKING

There is no international legislature in any proper sense of the term — no international body with full lawmaking power. Some of the historic schemes of international organization have embodied such an agency, under one name or another, and the extreme internationalists still dream of a " Parliament of Man " in a " Federation of the World."

But the obstacles in the way of establishing such an institution, as the world is now politically constituted, place it beyond the range of serious discussion. A true international legislature would imply recognition of a political superior over the nations; but the theories which underlie the modern state system are deemed incompatible with the existence of a super-state or super-government — any external authority with power to impose legal obligations upon an unwilling state.

This does not mean, of course, that states refuse to assume legal obligations, but only that they insist upon the right, in the exercise of sovereignty, voluntarily to accept or reject such obligations. Nor does it follow, from the fact that no international legislature exists, that the legislative function is equally non-existent; indeed, municipal law does not necessarily result from the action of a definite lawmaking power. Sir Henry Maine has pointed out that the legislature is a comparatively modern institution; and yet civil law is as old as organized political society. In fact there exists today a very considerable body of rules of customary origin, collectively called international law,[1] which have been supplemented from time to time by international action of a legislative nature. Broadly speaking, the process whereby custom ripens into law is legislative; but obviously it cannot be said that such rules are legislative enactments, or the result of legislative action in the ordinary sense of the term.

Not so, however, as to certain international treaties and conventions of a lawmaking character which have appeared since the beginning of the nineteenth century. They are true legislation, practically if not technically, although not the work of an international legislature. By concurrent legislative action the states have coöperated to bring this body of rules into existence. It is the purpose of this chapter to trace the origin, progress, and results of this international legislative function.[2]

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[1] Discussed in Ch. VIII.

Sources of International Law

As has already appeared, international law is derived from two main sources: first, custom and usage, which have gradually developed what is known as the common law of nations; and second, the exercise of the treaty-making power. Perhaps a more complete classification might include a third source — the action of administrative bodies of the character discussed in the last chapter, which have established rules of procedure, each within its sphere, pursuant to authority conferred in general terms by the international conventions under which they function. Of these two main sources, custom and usage have produced the larger part of existing international law. Some of these customary rules go back to the remote beginnings of international life — as, for example, the rule declaring the inviolability of the person of the diplomatic agent while in the performance of his official duties. Indeed this code of customary law is a striking illustration of the familiar fact that social intercourse inevitably generates political precepts having the force of law, whether it be between nations, or between individuals within the nation.

It has already been noted that this body of customary law has its close analogy in what is called the common law of England, which still constitutes the basis of the private law of England, and of the United States where it was early adopted. The English common law was not enacted law — the work of a legislature; it came into existence as the gradual outgrowth of the practices of business life, and of the decisions of the courts in dealing with controversies between man and man, or between the individual and the state. And it was a vital and effective type of law precisely because it was rooted in the common life of the people, instead of being imposed upon the community by the fiat of a legislature. It existed in tradition and custom before it was enforced as law, and thus depended for its efficacy upon the habit of obedience as well as upon the dictates of authority.

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[2] For an account of the legislative activities of the League of Nations see Ch. XXII.

I. Treaties as a Source of International Law

But customary law alone can only meet the requirements of a comparatively static society; it ripens too slowly to keep pace with a rapidly changing environment. So it was with the English common law. At length its simple rules became inadequate; new conditions demanded an ampler system of law than custom had generated. Then the era of legislation proper began. Common law rules have been supplemented, both in England and the United States, by an increasing volume of statute law. So also, the customary law has been more or less enacted in statutes that are said to be declaratory of the common law — that is, codifications of the common law rules on particular subjects, with a view to making them clear and specific, or perhaps of settling conflicts as to precisely what they are.

Now the common law of nations has taken precisely the same course. A comparatively static international society like that of the fifteenth and sixteenth centuries, for example — a society of isolated self-contained states — could be tolerably well served by a body of customary rules, and could wait for customary modifications of those rules. Not so the modern community of nations. The annihilation of distance, the development of a far-flung commercial intercourse that must be protected and promoted, the multiplying interests in every field of human activity that modern nations have in common — in a word, the emergence of a new world of nations — has rendered some of the old common law rules obsolete, and given rise to the imperative need of a more comprehensive code. This need began to be keenly felt during the first half of the nineteenth century, with the enormous growth of machine industry, and the development of a system of land and ocean transportation of which the world had never before dreamed.

The Lawmaking Treaties

But the customary law of nations had developed no machinery adequate to this task of legislation; it had to be created by international coöperation. It took the form of international conferences called from time to time to consider the common problems which confronted a rapidly integrating society of states. Presently international legislation began to appear, in the form of general treaties between the members of a more or less numerous group of states. Sometimes these treaties have been formally acceded to by states not originally parties to them; sometimes they have come to be tacitly regarded as of universal validity by the general body of states. Thus the era of international lawmaking began. To some extent custom is still effective as a source of international law; [3] but in general the new system of international government is being developed by legislative action essentially akin to that of the state itself. In order to understand this new development it becomes necessary, first, to consider the rules governing the exercise of the treaty-making power, and then to review the international legislation which has resulted therefrom.

From one point of view treaties are mere agreements between two or more nations, and strictly analogous to the private contract.[4] The great bulk of them are nothing else. By these purely contractual treaties nations obligate themselves to do or not to do certain things; or they may set up a certain status which the parties undertake to respect, as by establishing a boundary line, or regulating fishing rights in certain waters. Such treaties are governmental only in a restricted sense; they regulate the conduct of the parties within the terms agreed upon, but they do not profess to govern the general practices of nations. It is not to be assumed, however, that such restricted treaties make no contributions to international law. On the contrary they sometimes constitute milestones in its development, in that they embody rules of conduct, as between the parties, in advance of established international practice, and so obviously enlightened and expedient as to win ultimate adoption into the body of international law.

Treaties like the foregoing are ordinarily what are called bilateral treaties — that is, treaties entered into by only two states. Under another classification they are called non-legislative treaties, because they do not purport to deal with any general rule of international practice. By far the larger part of all existing treaties are of this character. But beginning with the Congress of Vienna another type of treaty has appeared — the multilateral, legislative treaty, so-called because it is entered into by several nations and is intended to have legislative effect. The deliberate exercise of the legislative function in the adoption of these lawmaking treaties marked the beginning of a new era in international relations.

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[3] The case of the *S. S. Wimbledon,* already referred to, illustrates how international practice, evidenced by successive treaties, may tend to establish general rules of law.

[4] The word "treaty" will be here used in its inclusive sense. The term "convention" has come into quite common use, usually referring to international agreements of a less solemn or permanent nature than those denominated treaties. There seems to be no clear distinction between the treaty and the convention, beyond the one suggested above.

So important is this new aspect of international government that it deserves full consideration.[5] Its significance is not to be measured by its immediate results, valuable as they are; rather is it to be viewed as a new method of international coöperation in the field of legal regulation, an effective means of broadening the legal concept in international relations. From this point of view its potentialities are limitless. Like every advance in the science of government it has raised problems of its own, among them being that of perfecting the machinery of international legislation. The international lawmaking conference leaves much to be desired in point of organization and procedure; but the main point is that it does function, and that the states of the world are coming to recognize it as a normal and necessary organ of international society.

Treaty-making is one of the most fundamental prerogatives of sovereign states. They may, however, restrict their treaty-making competency by voluntary action without falling out of the category of sovereign state.[6] So also, as already noted, neutralized states like Switzerland are restricted in their power to assume treaty obligations, in that they may not enter into treaty relations inconsistent with their status as neutralized states.

II. TREATY NEGOTIATION

The organization of the treaty-making power of a state is a matter of legal indifference to other states. Whether it be solely a function of the executive department, or a joint function of the executive and one or both branches of the legislature, is of purely domestic concern. It is necessary, however, to full international status that a state shall establish and maintain some authority competent to bind it by international agreements. The treaty-making function is commonly performed in two stages: negotiation, which is in charge of a foreign office organized in the executive department and ordinarily acting through diplomatic officers abroad; and ratification, or approval of the results of negotiation by some constitutional agency in the home government.[7]

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[5] See Chs. XV and XXII.

[6] Cuba, for example, under the so-called Platt Amendment.

[7] The constitution of a state might do away with formal ratification, vest-

Again, negotiation may be carried through by ordinary diplomatic action alone,[8] or it may be consummated by a conference or congress, in which the parties to the proposed treaty are represented. These two general methods are by no means mutually exclusive. The conference is always preceded by diplomatic preparation — indeed, its success often depends upon the adequacy of the preparatory work that has been done by way of settling and clarifying the issues to be discussed, accumulating statistical and other data to aid the conference, especially on technical questions, and taking steps in advance of the actual sitting of the conference to promote agreement upon contentious points. The value of this preliminary work in delicate negotiations is apparent.

Enough has already been said about the organization of international conferences.[9] The legislative conference differs in no essential respect, in point of make-up and methods, from those convened to deal with economic, scientific, and other interests, or from the so-called peace conference. As a matter of fact, no clear line of demarcation can be drawn between these various types of conference. It sometimes happens, for example, that a conference called to effect a peace settlement will also act in a legislative capacity. Such was the Congress of Vienna, of 1815, which as already seen laid down rules concerning the personnel of the diplomatic service, although primarily a peace conference. Such, also, was the Conference at Paris, in 1856, which was called to establish peace after the Crimean war, but took occasion to announce certain principles of maritime warfare in the famous Declaration of Paris.[10] And such preëminently was the Versailles Conference of 1919, which not only framed peace treaties, but set up an international organization to deal with labor problems, and incorporated into its treaties a great international statute — the Covenant of the League of Nations.

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ing in the agencies of negotiation full treaty-making power. But this has become less and less the practice in modern democracies.

[8] It often happens, in negotiations of exceptional importance, that the parties will appoint special negotiators — ambassadors extraordinary and ministers plenipotentiary, they are termed in diplomatic parlance — to conduct the negotiations. Or again, such special negotiators may be associated with the regular diplomatic agent to constitute a commission. So also, this procedure may be followed when the negotiations involve technical questions proper for experts. The United States government, in negotiating some of its early treaties, resorted to the use of special negotiators with marked success.

[9] See Ch. X.

[10] See Ch. XV.

III. Ratification of Treaties

When the work of negotiation has been brought to a successful termination, by either of the methods suggested, the resulting draft treaty is "initialed" by the diplomats, or some of them duly authorized to do so — that is, signed by them to indicate that it has their approval. It is then transmitted to their respective governments for ratification. In modern practice neither conference nor diplomat has any treaty-making power but that of initiation; a further proceeding termed ratification is necessary to give full validity to the agreement negotiated. If, indeed, the diplomat were armed with the full treaty-making power of the state he represents, as might be the case in an autocracy, ratification might be unnecessary, or at most a mere formality. So also, a negotiation conducted under the immediate direction of a ministry itself enjoying plenary treaty-making power, or commanding a safe parliamentary majority, would be tantamount to ratification, practically speaking.

In modern democratic government, however, it is coming to be more and more the practice to require a distinct act of treaty ratification by some agency other than that which conducted the negotiations, especially in the case of important treaties, thus giving opportunity for public discussion and the crystallization of public opinion. In the United States it is the prerogative of the Senate to ratify or reject treaties submitted to it by the executive. In Great Britain treaty-making is essentially a prerogative of the Crown — the executive power; but treaties of fundamental importance are likely to be submitted to Parliament for approval, as was done with the peace treaties of 1919–1920.[11] Of course Parliament has an effective check upon this executive power as regards treaties which are not self-executing — that is, which must be made effective by legislation.

A fact worth noting is that, with the exception of Switzerland, where under a recent constitutional amendment treaties which purport to bind the state for a longer period than fifteen years must be submitted to the electorate, on demand of 30,000 qualified Swiss voters, or of eight cantons, the people are nowhere given a direct voice in the ratification of treaties. Even where the principles of the initiative and referendum are amply recognized in the matter of domestic policy, direct government stops short of participation in treaty-making. The growing practice of according to representative bodies the right to pass upon treaties negotiated by the executive is of great significance. It means that peoples are more and more claiming the right to have an effective voice in foreign policy, being no longer content to leave that important function of self-government entirely to that branch of government less immediately responsible to them.

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[11] The British Labor ministry inaugurated the practice of bringing treaties into the Houses of Parliament, there to remain for a limited period for purposes of publicity. This practice does not appear to have been followed by succeeding governments. For a note summarizing the constitutional procedure of the leading European states in the matter of treaty-making, see A. S. Hershey, *Essentials of International Public Law and Organization* (1927), 434 ff. On the exercise of the treaty-making power in England see F. A. Ogg, *English Government and Politics* (1929), 91.

Ratification a Matter of State Policy

International law leaves each state to vest the power of ratification in such agencies as it may deem appropriate; but in view of the very great importance to international government of strengthening international engagements by the assurance that they are supported by public opinion in the contracting states, it may well be that ultimately international law will prescribe popular approval of treaties, direct or through representative bodies, as a requirement of ratification.

Ratification, then, is the formal act of a state, by its duly constituted authority, whereby it signifies its approval of a proposed treaty. The question used to be much debated whether a state could rightfully refuse to ratify a treaty negotiated in due form. However this may have been in the autocratic systems of former days, there is no doubt now of the plenary right of a government to reject the work of its negotiators for any reason whatever — or indeed for no assignable reason. In the latter case the charge of bad faith might be preferred by the other party, but the strict legality of the act would be undoubted. Especially is this true where, as in the United States, treaty-making is a combined executive and legislative function. It goes without saying that governments should not decline ratification without adequate and openly stated reasons; any other course suggests unworthy motives and tends to disturb friendly relations between nations.[12]

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[12] There was some feeling in Europe that inasmuch as the United States, through its executive department, had taken a leading part in the framing of the Versailles peace treaty, it was morally bound to ratify it, and that the failure to do so was suggestive of bad faith. Not only was the United States strictly within its legal rights in refusing ratification, but it can hardly be said, in view of the unqualified constitutional power of the Senate to accept or reject a treaty, that the executive, by its negotiation of a treaty, can impose upon the Senate even a moral obligation to ratify.

Process of International Lawmaking Cumbersome

Thus the process of international legislation is roughly analogous to the domestic initiative and referendum. The initiative is diplomatic — through the regular diplomatic service of the states concerned, or, as regards the more important undertakings, through diplomatic conferences wherein the states are represented. That the process is cumbersome and difficult is obvious enough. First, as to each contracting state, its domestic interests, if any are especially involved in the treaty proposals before it, must be deliberately considered, and its diplomatic machinery, proverbially ponderous and dilatory, geared up. Again, the joint diplomatic forces of the several states must be marshalled and organized; and finally, when the frequently tedious work of formulation is done, each state must set its often slow-moving machinery of ratification in motion. Nor is this all. General assent to acts of international legislation is necessary if they are to have the force of universal international law; and even if they are intended to have a more restricted application, the assent of all the more important powers concerned must be secured.

Having regard to all the conflicting interests and ambitions of a numerous group of states, these conditions would seem to doom this source of international law to comparative sterility; and it is true, generally speaking, that by such a process agreement is reached with difficulty, and only on the more fundamental and obvious propositions. On the other hand, there are considerations weighing heavily on the side of agreement, especially in these days of increasingly uniform standards of life. If it be a patently humane rule of warfare that is proposed, for example, states hesitate to risk the moral condemnation of their neighbors by refusing assent to it. Again, if sound practical considerations necessitate some coöperative regulation of international commerce — measures to avert collisions at sea, for instance — sheer self-interest dictates their general acceptance. Furthermore, it often happens that a considerable number of states have no practical interest in a legislative proposal, and therefore no motive to oppose it. They formally accept it if their acceptance is necessary as a matter of procedure, as it might be if the proposal were pending in a conference in which they were represented; otherwise they simply acquiesce in it, thus assenting by implication. Tacit acceptance may sometimes raise doubt about the validity of a rule, but if long-continued, it is fairly decisive.

Legislative Treaties Require General but not Universal Acceptance

It is to be noted, also, as a practical matter, that in some cases the affirmative assent of all states is not necessary to the validity of a rule of international law. It is often difficult to determine whether a rule which has been adopted by a limited group of states is to be taken as part of international law. This question, often of great interest and importance to statesmen and jurists, need not be pursued here beyond a single suggestion.

Enough has been said in another connection about the so-called primacy of the Great Powers to indicate that a group of states enjoy a predominant influence in the common councils, however incompatible it may be with the principle of state equality.[13] Thus it often happens that legislative proposals adopted by the more important states, and backed by their power, are to all intents and purposes the established rules on the points involved. If within the code of law governing war, their observance by the lesser states may be coerced; and if concerned with peaceful intercourse, self-interest would ordinarily dictate compliance.

Nevertheless, the process of international lawmaking is slow and difficult, tending to lag behind the practical necessities of international life. It could be quickened and invigorated, of course, by setting up a true international legislature, but as already suggested, universally accepted principles of international law will have to be profoundly modified before any such institution can be seriously considered. But it cannot be too emphatically stated that no more significant political phenomenon has appeared in the modern world than this of deliberate international lawmaking. It indicates the practical recognition of a wide range of common interests too vital to remain unregulated, too urgent to wait upon the tardy growth of regulative custom. Finally, the very effort to induce agreement as to matters that concern the general welfare in spite of conflicting interests, is a powerful factor in promoting mutual understanding, an appreciation of common problems, and a spirit of tolerance in the everyday intercourse of nations.

IV. BINDING FORCE OF TREATIES

Serious questions often arise as to whether treaties are still binding upon the parties to them. No such question can arise, of course, in the case of treaties the terms of which have been fully complied with; nor when the treaty provides, as frequently happens, that it shall terminate after the lapse of a specified period of years. So also, difficulty is sometimes obviated by the provision that the treaty shall remain effective until " denounced " by one party or the other — that is, until due notice of termination is given. The troublesome cases are those in which, there being no specific provision as to termination, one of the parties insists that lapse of time and changed circumstances have rendered the treaty obsolete. Such situations as these, where states solemnly renounce treaty obligations which other states insist are valid, tend not only to disturb the international peace, but to undermine respect for treaties — and indeed for the whole body of international law.[14]

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[13] Above, Ch. VII.

Perhaps the most frequently cited illustration of this class of cases is the annexation, by Austria-Hungary in 1908, of the provinces of Bosnia and Herzegovina, in violation of the treaty of Berlin of 1878, under which Austria-Hungary was to occupy and administer the provinces subject to the nominal suzerainty of the Sultan.[15] This step was taken without the consent of, or consultation with, the other signatories of the treaty and while, formally at any rate, it was in full force and effect. Moreover, the case was aggravated by the fact that Austria-Hungary was a party to a declaration made by the powers at London in 1871 to the effect that:

> It is an essential principle of the law of nations that no power can liberate itself from the engagements of a treaty, or modify the provisions thereof, unless with the consent of the contracting parties by means of an amicable arrangement.[16]

This declaration was called out by the action of Russia, the year before, in declaring herself no longer bound by the provisions of the

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[14] A somewhat analogous situation is found in domestic government. With changes in personal habits and social observances, and sometimes in the mere physical conditions of life, public sentiment with respect to many statutes also changes, so that the authorities find difficulty in their enforcement; and yet legislatures hesitate to repeal them. The obsolete and obsolescent statute constitutes a real domestic problem, especially in that it tends to weaken respect for all law.

[15] On this incident see comment by T. J. Lawrence, *The Principles of International Law* (7th Ed., 1923), 305–306.

[16] On this declaration see Lawrence, *op. cit.,* 302–307. In a Convention on Treaties, signed at the Sixth Pan-American Conference, appears the following Article: " No state can relieve itself of the obligations of a treaty or modify its stipulations except by the agreement, secured through peaceful means, of the other contracting parties."

Treaty of Paris regarding the neutralization of the Black Sea, and the restrictions imposed upon her with regard to maintaining armed vessels therein, her claim being that she was released from the obligation of these provisions because of territorial and other changes that had intervened since the treaty was signed. Other illustrations could be cited.

Two Principles Invoked

Unfortunately there is no rule of international law governing this important matter, and the authorities are in hopeless conflict as to the correct principle involved. The theory set forth in the declaration quoted above is criticized as being untenable in practice because, taken literally, a single recalcitrant, obstructionist party to a multilateral treaty could stand against the most necessary modifications of it, to the detriment of all the other states concerned. But to go to the other extreme and say, with some writers, that treaties may be repudiated by a state on the ground that they conflict with the "rights and welfare of the people," or are incompatible with the development of the state, is to adopt a purely subjective test of the right to repudiate, and thereby to weaken the whole treaty system.

There being no international authority to pass upon such questions, it comes to this, that each state must decide for itself, under the circumstances of each particular case, as to the binding force of its treaty stipulations. The extreme alternative principles are obviously untenable. To hold that treaties once entered into are of perpetual validity, would be against public policy; on the other hand, to adopt the rule that they are binding only so long as they chime in with the policy of all the parties to them, would be equally mischievous. The rule of good faith is universally recognized, to be sure, but beyond that international law affords no guide in this matter. One writer frankly declares that these questions transcend law, and its rules do not apply to them.[17]

The League of Nations and Treaty Revision

With a view to minimizing the difficulties arising out of obsolescent treaties, the Covenant of the League of Nations provides:

> The Assembly may from time to time advise the reconsideration by members of the League of treaties which have become inapplicable, and

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[17] On this general question see C. G. Fenwick, *International Law* (1924), 344 ff. See extended article by Sir John Fischer Williams on "The Permanence of Treaties," 22 *A. J.*, 89 (1928).

the consideration of international conditions whose continuance might endanger the peace of the world.[18]

This provision is a step in the direction of meeting the situations described above, but as construed thus far, it has very restricted application to treaty revision proper. In the first place, the Assembly can only " advise " reconsideration; it has no power to compel a state to heed its advice. In the second place, its advisory power is confined to treaties which have " become inapplicable." The Assembly has been disposed to construe this as meaning that only in cases where conditions existing at the time a treaty was concluded have subsequently changed so as to make it inapplicable, can the Assembly tender its advice. Thus a treaty originally " inapplicable " because unjust or unworkable would be outside its jurisdiction under the first part of this provision.

But the second part of the Article is of broader application. Under it the Assembly could take cognizance of situations arising out of inapplicable treaties if their continuance might " endanger the peace of the world." The force of Article XIX is, then, that the Assembly has no power to revise treaties, however inapplicable or unjust they may be, and can only advise reconsideration under certain circumstances — advice, however, which the states concerned might find it embarrassing to ignore if it were backed by strong sentiment in the Assembly. But the Article does empower the Assembly to discuss treaty relations disturbing to the peace of the world, and so to bring the force of international public opinion to bear upon revision.[19]

Sanctity of Treaty Obligations

The conflict of opinion and the varying practices of nations as regards the continuing validity of treaties raise the general question of the sanctity of treaty obligations. When Germany invaded Belgium at the outbreak of the World War, in violation not only of the general law of neutrality which protected Belgium as it did all neutrals, but of the treaty of neutralization to which Prussia — and therefore Germany — was a party, it was widely felt that a body blow had been struck at the whole structure of international government. But was it the legitimate inference from this cynical indifference to solemn treaty obligations, that all international treaties were mere " scraps of paper "? Obviously a searching question, for upon the answer to it the future of international government, which must rest upon treaty, and in the last analysis is rooted in international good faith, largely depends.

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[18] *Article* XIX.

[19] The first part of this Article was construed in connection with a request made by Bolivia to the Assembly for a revision of the peace treaty of 1904 between her and Chili. A committee of the Second Assembly considered the matter and announced the conclusions briefly stated above. See R. L. Buell, *International Relations* (Rev. Ed., 1929), 700. This Article was invoked by China, at the 10th League Assembly, concerning what she characterized as her inapplicable treaties with the Western Powers. The Assembly, however, declined to take the action requested.

Popular thought at the time was saturated with pessimism, and even in high places the most gloomy forebodings were voiced. The philosophy which justified the scrapping of the Belgian treaty was by no means exclusively German. An English writer, Professor J. A. Cramb, writing just before the War, gave it classic expression:

> In a treaty with an enemy that treaty is binding only so long as you can make your enemy see gleam behind the parchment the point of a sword.[20]

But was this the lesson of this tragic international episode? On the contrary, it is clear that it pointed quite another moral, namely, that the philosophy of treaty repudiation is doubly fatal — fatal alike to the ultimate success of any national policy built upon it, and to the integrity of international society. The constitution of the international political order is its treaty system; undermine that by any theory of treaty obligation dictated by a narrow nationalism, and international progress — international stability even — becomes impossible. At the moment this logic appeared to find tragic confirmation in the German violation of Belgium; and in this view it inspired widespread popular contempt for the sanctity of treaties, and general skepticism as to the validity of any international organization based upon mere paper agreements between states.

This was the natural interpretation of an offense against international law so grave as the cynical violation, by a great state, of a solemn treaty whose very purpose was protection against the injury thereby inflicted, on the immediate plea of military necessity; but such was not its true interpretation. On the contrary, its moral effect upon the German cause was so adverse, and its military consequences ultimately so disastrous, that it came to be viewed as a classic illustration of the folly of unfaithfulness to treaty obligations. So that, instead of weakening the foundations of international society it has strengthened the whole system of treaties by magnifying the sanctions likely to be visited upon a treaty-breaking state.[21]

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[20] *Germany and England* (1914), 147.

This conclusion is well stated by William D. Guthrie, arguing the point that the sanctity of treaties had been undermined by the experiences of the War:

> On the contrary the present war and its victory have vindicated the obligation of treaties and of the plighted faith and honor of nations infinitely more than ever before. . . . The truth is that the sanctity and force of treaties are today more firmly established than at any time in the history of the world.[22]

Significance of the International Treaty System

The exercise of the treaty-making power by the several states has resulted in an enormous network of treaties covering a wide range of subjects. It has been estimated that more than eight thousand international treaties were in force at the outbreak of the Great War; the United States alone had concluded 595 treaties down to August, 1914.[23] These figures are impressive evidence of the many interests which nations have in common — interests important enough to require the protection of mutual treaty stipulations. By far the larger number of these treaties are bilateral, the matters dealt with being deemed primarily of concern to the two states alone. But it is strikingly indicative of the trend of modern international relations that the interests of states have become so far identical, so generalized, as to make their treatment by multipartite agreements highly expedient; hence the great increase latterly in the number of such treaties, the more important of which will be reviewed in the next chapter.

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[21] That Germany did not herself in fact consider the Belgian neutralization treaty a mere "scrap of paper," or minimize the gravity of her breach of it, is indicated by the persistent attempts she made later to justify her policy by establishing prior breaches of the treaty on the part of France and Belgium.

[22] *The League of Nations and Miscellaneous Addresses* (1923), 12.

[23] Hershey, *op. cit.*, 433, note.

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See also references appended to Ch. X.

CHAPTER XV

INTERNATIONAL LEGISLATION

International statutes were unknown to Grotius. It was almost two centuries after the appearance of his epoch-making treatise on international law (1625) before they began to form part of the body of the law of nations.

While many international documents dating from the Peace of Utrecht (1713) may be called in a way law-recognizing treaties, nevertheless the professedly law-making or law-recognizing treaties which characterize the nineteenth century began with the declaration of the Holy Alliance (at Aix-la-Chapelle, in 1818).[1]

It will be recalled that at the Congress of Vienna, held three years earlier, rules were adopted which, as supplemented by an additional rule of the Congress of 1818, organized the diplomatic service by establishing four grades of ministers.[2] This action was definitely legislative, and has stood formally unchanged to the present day. The Congress of Vienna was not primarily a lawmaking body; its legislative activity was incidental to its main functions as a peace conference. Yet here was an international precedent of the first importance. An international conference, looking to the future, had definitely taken action upon a matter of common interest not concerned with the establishment of peace. And the precedents of these two conferences were significant from another point of view. The common law of nations had developed no lawmaking machinery; its processes of growth remained unchanged, despite the evident need of new law to supplement the old. Here appeared a device suited to legislative purposes — the international conference; and while it is a far cry from the Congress of Vienna — a peace conference primarily, a legislative body incidentally — to the great Hague lawmaking conferences of 1899 and 1907, the line of evolution is direct and logical.

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[1] Jesse S. Reeves, "International Society and International Law," 15 *A. J.*, 361, at p. 366 (1921).

[2] Ante, Ch. IX.

I. INTERNATIONAL LAWMAKING IN THE NINETEENTH CENTURY

In the century between Vienna and The Hague are to be found numerous examples of the exercise of international lawmaking power, the more important of which may be reviewed. Some of the resultant lawmaking treaties are purely legislative, all their stipulations being intended to regulate the conduct of the whole body of civilized states.[3] Others likewise purport to lay down rules intended to be of general obligation, but refer to other matters as well. Of this second class of treaties, the Treaty of Berlin, of 1878, under which Roumania and Serbia were accorded the status of sovereign states, may be taken as an example. It embraced many other provisions of interest only to the powers immediately concerned, but as to these general stipulations it was international legislation — not, however, legislation prescribing rules of international conduct. Other treaties of this character appeared during the nineteenth century.[4]

A third class of treaties may be considered as quasi-legislative. These are treaties which, though laying down no new rules of international law, and often including rules inconsistent with the recognized practices of nations, undertake to clarify the law in some respects, thus performing a true legislative function. The conventions of the so-called Armed Neutralities of 1780 and 1800 were of this character.[5]

Pure Lawmaking Treaties

An example of a pure lawmaking treaty is the Declaration of Paris, agreed upon at Paris in 1856, by the seven nations which entered into the treaty of Paris after the Crimean War. Some fifty other nations have since adhered to the Declaration, and belligerents have uniformly observed it in naval warfare, whether signatories or not.[6] The so-called Final Act of the Congo Conference of 1885, relating to conditions in the Congo River basin in Africa, is another example of a pure lawmaking treaty. It was signed by fourteen powers, and provided, among other things, for freedom of commerce in this region, the prohibition of the sale and transport of slaves therein, freedom of navigation on the Congo and Niger rivers, and the notification by each state to the others of all future occupations and protectorates on the African coasts.[7] This Act was supplemented by further legislation adopted at the Conference of Brussels of 1890, which was attended by seventeen states. This conference signed a "General Act for the repression of the African slave trade and the restriction of the importation into, and sale in, a certain defined zone of the African continent, of firearms, ammunition, and spirituous liquors."[8] States not signatories have recognized the validity of these provisions by conforming to them, thus giving them the force of international legislation.

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[3] T. J. Lawrence, *The Principles of International Law* (7th Ed., 1923), 37 ff.

[4] On the relation between treaties and international law see Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), 141.

[5] The Armed Neutralities were leagues of nations neutral in the wars then being prosecuted, formed for the purpose of protecting their commerce against the stringent naval policies adopted by the belligerents. Their conventions laid down certain principles relating to the rights of neutral maritime commerce.

[6] This famous Declaration laid down four rules of maritime law:

1. Privateering is and remains abolished.
2. The neutral flag covers enemy's goods, with the exception of contraband of war.

One of the most important additions ever made to the law of war was the familiar Red Cross Convention adopted by an international conference at Geneva in 1864. This conference was participated in, first and last, by twenty-three states. The purpose of this great convention was to alleviate the rigors of war by affording security to persons engaged in the work of caring for the sick and wounded, and by rendering immune from the ravages of war hospitals, ambulances, and material employed in this humane work. Other articles were added to this convention in 1868, and in 1906 it was superseded by a new convention adopted at Geneva. In 1899 its rules were extended to maritime war.

Another addition was made to the laws of war by an international conference at St. Petersburg in 1868, a declaration being adopted renouncing, "as between the parties in their wars with one another,"

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3. Neutral goods, with the exception of contraband of war, are not liable to capture under an enemy's flag.
4. Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

The only power of importance that has not expressly assented to the Declaration is the United States, and its naval policy has been strictly in accord with it ever since its adoption.

[7] Lawrence, *op. cit.*, 101.

[8] For the text of these two Acts see *Official Documents* 3 *A. J.*, p. 7 (1909), *No. 1*. In 1919 the powers negotiated a new convention which substituted for the anti-slavery provisions of the Berlin and Brussels treaties a clause declaring that they would "endeavor to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea."

the use of projectiles below a prescribed weight which were explosive or charged with fulminating or inflammable substances.

A more pretentious effort at international legislation was made by an international conference at Brussels in 1874, which was attended by all the important states of Europe. An elaborate code of rules regulating warfare on land was drawn up, but it failed of ratification.[9] Nevertheless it proved to be of permanent value, forming the basis of the great Conventions Respecting the Laws and Customs of War on Land, adopted by the Hague Conferences and ratified by nearly all the civilized states of the world.

As an important part of this movement should be mentioned the series of conventions, beginning in 1865, establishing the international administrative unions discussed in Chapter XIII. In that year twenty European nations joined in a convention providing for the Telegraphic Union, which was followed, in 1875, by the convention organizing the Universal Postal Union, the greatest of the International administrative unions, called by one writer a " universal League of Nations."[10] Other similar international statutes are the conventions creating the International Bureau of Weights and Measures, or Metric Union (1875), the International Institute of Agriculture (1905), and the International Office of Public Hygiene (1907).

II. Work of the Hague Peace Conferences

But the most impressive illustrations of international legislation are the conventions adopted by the First and Second Hague Peace Conferences. These great conferences are landmarks in the evolution of the international lawmaking function. They were the first general conferences of the nations called in time of peace to deal with matters of common concern to the society of nations. The first conference, called by the Czar of Russia in 1898 and assembled the following year, was not a peace conference in the sense of that term already discussed. It was called in the hope, as expressed in the official invitation, that the time had come to put " an end to the progressive development of the present armaments," and to lighten the burden imposed by war and preparations for war. Its program, therefore, embraced proposals to that end, as well as measures to lessen the rigors of war such as the prohibition of various instrumentalities and methods of warfare. The program also included the consideration of the matter of good offices, mediation, and arbitration, and its work in dealing with these war-preventive measures constituted its most important achievement.

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[9] It is of interest to American students that this code was modelled after the code formulated by Dr. Francis Lieber in 1863, at the request of the federal government, for the use of the Union armies in the Civil War. Indeed the Lieber code inspired many of the later efforts to humanize the rules of war, its influence being felt as late as the time of the Hague Conferences. See George Grafton Wilson, *International Law* (2nd Ed., 1927), 250.

[10] Manley O. Hudson, " The Development of International Law Since the War," 22 *A. J.*, 330, at p. 340 (1928).

The conference agreed upon conventions relating to three important subjects: (1) Pacific Settlement of International Disputes, (2) the Laws and Customs of War, and (3) the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1864. It also adopted three Declarations relating to prohibited methods of waging war, and several "Wishes" referring to the laws of war. One wish was for the further consideration of the limitation of armaments, a subject on which the conference made no practical headway; it did, however, adopt a resolution favoring the restriction of military charges. The wish for a further conference on armaments, and others suggesting the reference of certain questions to a subsequent conference, foreshadowed the Second Peace Conference of 1907.

It is not too much to say that the First Hague Conference marked the beginning of a new epoch for international law and relations. While its immediate results were not impressive, they have turned out to be of permanent value. Its convention dealing with the Laws and Customs of War, which was based on the Brussels Declaration of 1874, was the most comprehensive single code of rules ever added to the body of international law; while the Convention for the Pacific Settlement of International Disputes, which established the Hague Permanent Court of Arbitration, has had enormous influence upon the development of arbitration as a substitute for war.[11]

Work of the Second Hague Conference

The Second International Conference at The Hague, held in 1907, concluded thirteen conventions and one declaration, expressed three wishes, and made several recommendations. Besides revising the conventions of 1899 relating to the laws and customs of war on land, and to the pacific settlement of international disputes, it concluded several conventions relating to particular aspects of war, such as declarations of war, the rights and duties of neutral powers in land and naval warfare, and the conversion of merchant ships into war ships, and revised the convention of 1899 adapting the principles of the Geneva Red Cross convention to naval war.[12] This conference also considered compulsory arbitration at great length; and while unable to agree upon any class of cases to which obligatory arbitration should apply, it pronounced in favor of the principle.

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[11] This point is further considered in Part VI.

The conference undertook to draft a plan for an International Court of Justice, and succeeded in doing so except as regards provisions for the representation of the various nations on the panel of judges. But in spite of the failure to perfect the scheme, the work of the conference upon it was of ultimate value, as it was freely drawn upon in framing the Statute of the Permanent Court of International Justice later set up under the auspices of the League of Nations.

One difficulty in the way of securing agreement upon the International Prize Court proposed by the conference was the disagreement among naval powers as to certain important principles of maritime law. To obviate this difficulty so far as possible an international naval conference was held in London in 1908–1909, the result of its deliberations being the so-called Declaration of London concerning the laws of naval warfare. This Declaration never went into effect, Great Britain, the leading naval power, having failed to ratify it; but as the work of eminent naval experts it constitutes an authoritative code of naval law.[13]

The growth of international legislation has received powerful stimulus from two sources: First, the activities of associations organized to promote the development of international law. Among these may be mentioned the Institute of International Law organized at Ghent in 1873, the International Law Association organized the same year at Brussels, the Interparliamentary Union organized in 1889, with its seat at Geneva, the Academy of International Law founded at The Hague in 1914; and in the New World, the American Society of International Law established in 1905, and the American Institute of International Law organized in 1912. The other general influence upon the development of international legislation has been the work of international conferences, official in character, in the form of proposed codes of law on special subjects. Such was the Code of Land Warfare, framed at the Brussels Conference in 1874; it failed of ratification, but was thereafter recognized as authoritative. Another illustration is the Declaration adopted at the London Naval Conference of 1909, mentioned above which, although it also failed of ratification, has been rightly regarded as a landmark in the history of international law.[14]

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[12] These conventions and declarations were pretty generally ratified by the states represented at the conference. On this see Hershey, *Essentials of International Public Law and Organization* (Rev. Ed., 1927), 98, note. For tables showing the states which signed the various conventions see 2 *A. J.*, 876 (1908); and for table of ratifications see 5 *A. J.*, 769 (1911). For text of the Final Act of this conference, summing up its work, see Wilson, *op. cit.*, 475. J. W. Garner, *Recent Developments in International Law* (1925), Lecture II, has an extended review of the work of these conferences.

[13] See article on "International Legislation," by Frederick S. Dunn, XLII *Pol. Sci. Quar.*, 571.

International Legislation Before the World War

Thus up to the outbreak of the World War a large number of multilateral instruments, under one name or another — Treaties, Conventions, Protocols, General Acts, Declarations, or Agreements of a general legislative character — had come into existence. A list recently compiled [15] embraces more than two hundred such instruments which appeared in the half-century between 1864 and 1914. Only the more important of them have been referred to above. Despite this rather impressive output, international legislation lagged behind the requirements of international life. The legislative process was haphazard, unsystematic, unsatisfactory. No continuing bodies existed to anticipate the need of regulating new subjects of international concern as they arose. The plan of recurring conferences, to which recourse was had, left much to be desired; it was somewhat at the mercy of international politics; it developed no agencies to do either the preliminary work indispensably necessary to the success of the conference, or the follow-up work often required to get the best results from its action. In a word, international legislative action by occasional conferences was unorganized, sporadic, and inadequate to the needs of international society.

Since the World War these defects in the earlier system — or lack of system — have been remedied in very substantial measure by the machinery of the League of Nations and the International Labor Organization. The Covenant of the League and the Labor Part of the Versailles Treaty were themselves legislative acts of the first importance. Each of these statutes provides for an annual conference, deliberative in character, and for continuing bodies of an administrative nature — the League Secretariat and the International Labor Office, admirably equipped to investigate and report on matters referred to them by the conferences,[16] with a view to future legislative action thereon. The result has been two-fold: An extraordinary number of international legislative acts of great importance, evidencing renewed activity and vastly increased efficiency in this field; and the inauguration by the League of a movement to codify international law — the most promising effort of the kind ever undertaken. These developments will be discussed in Chapters XXII and XXXV.

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[14] Hershey, *op. cit.*, 101.

[15] Under the direction of Professor Manley O. Hudson, and published in *Official Documents Vol. 22 A. J.* (1928), 90 ff. See R. L. Bridgman, *The First Book of World Law* (1911), for a compilation of International Conventions to which the principal nations are signatory, with a survey of their significance. R. L. Buell, *International Relations* (Rev. Ed., 1929), 678–679, has a list of international legislative acts adopted before the War. See also S. H. Allen, *International Relations,* Ch. VII, on General Welfare Conventions.

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[16] Or in the case of the Secretariat, by the Council of the League.

Part VI

THE INTERNATIONAL JUDICIAL FUNCTION

CHAPTER XVI

PACIFIC METHODS OF SETTLING INTERNATIONAL DISPUTES

International government has made substantial progress towards the substitution for war of peaceful methods of settling international disputes. A growing sense of the futility and inhumanity of war as an arbiter between nations, and of the lack of any essential quality of justice in the decisions of armed force, has focussed the thought of the world upon the desirability of establishing, as between nations, agencies for the settlement of their quarrels analogous to the judicial systems of civilized states.

Until recently progress has been comparatively slow and difficult. The resort to war has been for ages the traditional method of deciding issues between nations. It makes powerful appeal to the fighting instincts of men, and to the sentiment of national patriotism. It has been glorified in art and literature as the theatre for the supreme exhibition of heroism and self-sacrifice. It has developed latterly the enormous standing armies and navies maintained by the more powerful states,[1] and in consequence a large military class whose strictly professional interests are best served by opportunities to exhibit their professional attainments. Moreover, the development of substitutes for war has met stubborn resistance in certain accepted theories of international law, chief among these being national sovereignty, or independence. So keen has been the sense of the supreme importance of this attribute of the state, that it has largely dominated international life since the rise of the modern state. To yield the right to make war at will; to agree beforehand that controversies as they arise shall be referred for decision to agencies akin to the familiar domestic courts, has been deemed an infringement upon sovereignty, and entirely inadmissible.

In recent years, however, and especially since the World War, statesmen as well as theorists have attacked with unprecedented vigor the problem of strengthening the pacific substitutes for war. It is the purpose of this and succeeding chapters to indicate how far, and how, progress towards this end has been made. It will be helpful, by way of preface to a discussion of the international judicial function, to refer to, and distinguish, certain other peaceful methods of settling international disputes — diplomacy, good offices and mediation, conciliation, and the commission of inquiry. Of these procedures the commission of inquiry is judicial in method but falls short of the full judicial function, as will appear. Conciliation may resort to judicial technique in so far as it proceeds by way of inquiry to ascertain the facts in dispute; but it is especially applicable to political as distinguished from "justiciable" differences, and results, if successful, in an adjustment rather than an award or judgment. Diplomacy, good offices, and mediation are non-judicial in character, but they are pertinent to a discussion of judicial methods of settling international disputes, not only because they have a common aim, but also because they often pave the way for arbitration or strict judicial settlement.

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[1] Indeed, we now rank states as Great Powers and small powers chiefly on the basis of their actual or potential fighting strength, regardless of other standards of comparison.

I. Diplomatic Negotiation

First, as to the diplomatic method of settlement, on which something has been said in another connection.[2] Negotiation may be called the normal mode of dealing with international differences. The machinery employed has already been described — the foreign offices of the respective governments and their regular or special diplomatic agents. A surprisingly large number of international disputes are thus disposed of in the ordinary intercourse between states. As the result of diplomatic correspondence, often protracted, the foreign office of the offended state formulates a claim with respect to the transaction complained of, based upon all ascertainable facts. If a violation of international legal duty or obligation injurious to the complaining state is established, or is thought in good faith to exist, a formal demand for explanation, disavowal, or reparation is prepared and forwarded to the foreign office of the offending state. If the offense complained of be clear and undoubted — for example, the wrongful act of some hot-headed or ill-advised official — the government of the offending state usually makes prompt and adequate reparation. If the case be doubtful in point of law, or the facts intricate and involved, a diplomatic correspondence may follow, sometimes continuing for years.[3]

[2] Ch. X.

[3] Familiar cases illustrative of diplomatic adjustment are the Civil War Trent Affair and the Case of the Florida. On these cases see John Bassett

The obvious weakness of the diplomatic method of settlement is that it forces the contending states to be judges in their own cases. From the standpoint of principle it is primitive, the only recourse of the parties being to "put forward their own views of the facts and the principles and to urge their claims and try to secure satisfaction of their interests by bargains and demands, persuasions, threats, or arguments."[4] Further, its success depends too much upon the personal element in each situation — the ambitions, temper, and propensities of those who happen to be in charge of the negotiations. Without clear principles to guide them, and stimulated by patriotic zeal, often overheated even though honest, to make the best possible bargains for the states they represent, untenable positions are easily taken — and once taken, stubbornly adhered to as a matter of personal pride or pique.

The necessary delay incident to the diplomatic method of settlement, by making possible the exercise of a calmer judgment and preventing precipitate measures, often averts recourse to force. The great gain from this delay is its effect upon public opinion; it affords the cooling-off period, the psychological value of which is a matter of common observation. Mr. Elihu Root has remarked that it is not uncommon to see two governments striving in the most conciliatory and patient way to settle some matter of difference peaceably, while a large part of the people in both countries maintain an uncompromising and belligerent attitude, insisting upon the extreme and uttermost view of their rights in a way which, if it were to control national action at the moment, would render peaceable settlement impossible.[5] In due time sentiment moderates and the electorate, better informed as to the merits of the controversy, will approve the diplomatic settlement.

II. GOOD OFFICES AND MEDIATION

Good offices and mediation are diplomatic in character, and differ only in the length to which the states resorting to them may see fit to go. In principle both contemplate the interposition, in a quarrel between two states, of a friendly third state, with a view to the re-

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Moore, *International Law Digest* (1906), Vol. VII, 768, 1090. These and other diplomatic controversies are discussed in the numerous works on American diplomacy.

[4] Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), 145.

[5] *A. J.*, Vol. I, p. 1 (1907).

establishment of amicable relations between the disputants. Good offices take the form of suggestions or advice; mediation goes a step further and assumes the character of actual diplomatic intervention on the part of the third power.[6] It differs from intervention proper in that force is not resorted to or threatened, the mediator simply acting as the friend of both parties in an attempt to reconcile them.[7]

Good offices and mediation seek to preserve, or to restore, international peace. They have been employed on many important occasions, not only to adjust ordinary differences but to end or avert hostilities. They may, if successful, result in mere compromise, or in a resort to arbitration; the method of adjustment is immaterial. They resemble the attempts of private parties to reconcile two friends. The moral weight of the tender of good offices, or mediation, depends measurably upon the motives, actual or suspected, of the interposing power, as well as upon its international importance.[8] The tender presupposes the acquiescence of the parties in dispute; in fact, it is often preceded by an invitation from them, collectively or individually.

There is an obvious distinction between mediation and arbitration. The former is an advisory, the latter a judicial, function; mediation recommends, arbitration decides. Nations have often accepted mediation where they were reluctant to arbitrate; they have also settled by arbitration questions which mediation could not have adjusted. Mediation sometimes results in arbitration.[9]

Hague Provisions for Good Offices and Mediation

The Hague Conference undertook to promote resort to good offices and mediation by laying down certain rules with respect thereto in the Convention for the Pacific Settlement of International Disputes. First, the signatory powers agree to have recourse to these methods of friendly adjustment before resorting to war over their disputes, "as far as circumstances allow." Second, to encourage friendly third powers to play the rôle of mediator, it is declared to be their right to tender good offices or mediation, the exercise of which "can never be regarded by either of the parties in dispute as an unfriendly act." Third, "the part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the states at variance": and his duties are at an end when once it is declared, either by one of the contending parties, or by the mediator himself, that the means of reconciliation proposed by him are not accepted. Fourth, it is declared that "good offices and mediation, undertaken either at the request of the parties in dispute or on the initiative of powers strangers to the dispute, have exclusively the character of advice and never have binding force."

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[6] For this distinction see Potter, *op. cit.*, 145–146.

[7] See ante Ch. VI, Sub. III.

[8] The tender of good offices by the United States, in the Russo-Japanese war of 1905, is a good illustration of this procedure. The communications addressed to the two governments by President Roosevelt, printed in *Treaties for the Advancement of Peace* (Carnegie Endowment, 1920), Introduction by James Brown Scott, indicate the method and spirit of such tenders. For an account of the mediation of the United States in the war between Spain and several South American countries, in 1866–1872, see E. A. Walsh (Ed.), *History and Nature of International Relations* (1922), pp. 163–164.

[9] For instances of mediation see J. B. Moore, *International Arbitrations* (1898), Vol. V, pp. 5042 ff.

The Hague Convention provides for special mediation in a plan which contemplates the choice, by each contending party, of a power to which is entrusted the mission of entering into communication with the power chosen on the other side, with a view to preventing the rupture of pacific relations. The matter thenceforth, unless otherwise agreed, is regarded as referred exclusively to the mediating powers for a term not exceeding thirty days.[10]

III. CONCILIATION

Good offices and mediation, in so far as they promote the settlement of disputes by compromise and without resort to arbitration, result in conciliation. The method of adjustment by conciliation has of late come into great prominence. Arbitration, being essentially judicial in character, as will be pointed out later, is adapted, strictly speaking, only to the determination of issues, either of law or fact, which are "justiciable" in their nature — that is, susceptible of treatment by the method of inquiry and decision followed in courts of law. Conciliation, on the other hand, seeks to bring the parties to an accord by the adjustment of conflicting interests; compromise is of the essence of conciliation.

Thus conciliation rather than arbitration is the appropriate method of dealing with political or non-justiciable disputes. Conciliation implies an attempt to harmonize or reconcile, not to judge or decide. It may succeed in averting a conflict by proposing to the parties a voluntary settlement in cases where no issue between the parties could be framed for submission to arbitration. The growing disposition of nations to go beyond the strict limits of arbitration and agree to submit non-justiciable disputes to conciliation, is of the utmost importance; for such issues, rather than those ordinarily deemed suitable for arbitration, seriously imperil the peace of the world. Disputes in such cases are apt to be rooted in subtle antagonisms and conflicts of interest, and to be fanned into danger by emotionalism. Indeed, they are often the more dangerous because they are not reducible to sharp questions of law or fact.[11]

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[10] For text of this convention as revised by the Second Hague Conference, see W. M. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers,* Vol. II, 2220. There was a precedent for this attempt to internationalize good offices and mediation in the action taken by the Congress of Paris, in 1856, with a view to the adjustment of disputes between the Sublime Porte and the other powers signatory to the Treaty of Paris. See Scott, *op. cit.,* 17.

As a matter of historic fact, non-justiciable disputes — those to which arbitration is not applicable — have probably been not only more hazardous to international peace than those susceptible of judicial settlement, but more numerous. Bryce has listed a number of wars during the second half of the nineteenth century — sixteen in all — the causes of which had little or no relation to legal questions, concluding that in only three of them, at the most, could the issues have been treated as justiciable.[12] It is likely that an analysis of the causes of war in any other period in modern history would point to much the same conclusion — namely, that wars are not usually waged over disputed principles of international law, or alleged violations of undisputed principles of international law, but ordinarily have far subtler causes, which must be dealt with by processes quite unlike those of courts of law.

To assume, as is frequently done, that the method of adjusting disputes by judicial procedure is applicable to the whole field of international controversy, and so applied would end war, is as unjustifiable, in the light of experience, and as prejudicial to sound reasoning on the problem of war, as is the contrary assumption that because wars have come in spite of arbitration treaties and tribunals, therefore arbitration is valueless. Granted that non-justiciable disputes will continue to trouble peace, it remains for the nations to develop some method of dealing with them; and this they are doing. Conciliation is taking its place beside arbitration as a recognized means of international adjustment. As it must be applied to differences more deep-seated and stubborn than those within the scope of arbitration, so there is correspondingly greater reluctance to submit to it, particularly by binding agreements in advance; but it has made gratifying progress since the War. The functions of the Council of the League of Nations in attempting to settle international disputes, later discussed, is of the nature of conciliation. So also it will appear that numerous conciliation treaties have been entered into by European states, and that the states of the Western Hemisphere have lately adopted the principle of conciliation.[13]

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[11] John A. Hobson, *Towards International Government* (1915), 46.

[12] *International Relations* (1922), 223 ff.

IV. The Commission of Inquiry

In recent years another procedure has been adopted in numerous treaties — that of the commission of inquiry. The commission of inquiry resembles a court of arbitration in that, within the scope of its functions, it is judicial in character. It is charged with the duty of finding the facts involved in the dispute and reporting them to the states concerned. It is unlike arbitration in that it makes no decision of the case submitted to it. So also, unlike conciliation, it does not ordinarily undertake to bring the parties to an agreement; that is outside its functions. It may, however, going beyond the strict scope of its duties, or if requested by the parties to do so, make recommendations as to an adjustment which the parties are at liberty to accept or reject as they may see fit. Its findings of fact may be made the basis of a settlement, or the parties may ignore them and proceed to other measures of adjustment, or to war.

This mode of settling certain international disputes was first given formal recognition by the First Hague Conference, which embodied this recommendation in its Convention for the Pacific Settlement of International Disputes:

> In differences of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on points of fact, the signatory powers recommend that the parties who have not been able to come to an agreement by means of diplomacy should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation.

This plan contemplated that a commission of inquiry should be set up by the parties in dispute, by special agreement defining the facts to be examined, the rules of procedure, and the powers of the commission. It was expressly provided that the report of the commission should be deemed merely a finding of facts and in no sense an award.[14]

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[13] See Chs. XVI and XXXII.

Obviously there is no reason why the parties cannot authorize the commission to go beyond the factual determination and propose a basis of setlement.[15] If it were to be empowered to go the whole length of making an award, or binding proposals of settlement, it would differ in no essential respect from an arbitral body. The convention of the First Hague Conference was revised and improved in some particulars by the Second, which added to the original plan an elaborate set of rules of procedure, to be followed in case the parties do not adopt rules of their own.

While a notable attempt to supplement arbitration, either by paving the way for it or by affording an independent basis of settlement, this commission of inquiry plan has serious limitations. It is in no sense obligatory as to any class of cases; differences involving "honor" or "vital interests" are expressly excepted, and other differences fall within the scheme only "as far as circumstances allow." Again, there is no provision for a permanent or standing commission; the parties are left to constitute their commission in each particular case by special agreement — not always an easy task in the heat of controversy.[16]

The Bryan Commission of Inquiry Treaties

In 1913–1914 the United States government took up with a number of other governments a project, proposed by Secretary of State Bryan, for the embodiment of the Hague Commission of Inquiry principle in a series of bilateral treaties. The Bryan plan went beyond that of the Hague in several important respects. First, it was made to apply to all disputes, without exception, which diplomacy should fail to adjust; the loopholes in the Hague scheme — honor and vital interests — were closed. Second, the proposed inquiries were to be made by permanent boards or commissions, whose aid could be invoked at any time by either party; and in some of the treaties the commission was empowered even to investigate upon its own initiative. Third, the plan provided that the commission should have a year's time in which to investigate and report, during which period the parties agreed not to declare war or resort to hostilities.

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[14] For an interesting precedent for this Commission of Inquiry plan see T. J. Lawrence, *International Problems and Hague Conferences* (1908), 60.

[15] In fact this was done in the so-called Dogger Bank case in 1904, a controversy between Great Britain and Russia over the firing upon a fleet of British fishing boats by a Russian squadron on its way to the Far East in the war between Russia and Japan. For the circumstances of this incident and comment thereon see A. S. Hershey, *Essentials of International Public Law and Organization* (Rev. Ed., 1927), 463 and note. See also Scott, *op. cit.,* 25; F. C. Hicks, *The New World Order* (1920), 140; J. W. Garner, *Recent Developments in International Law* (1925), 531.

[16] On International Commissions of Inquiry at the First and Second Hague Conferences see W. I. Hull, *The Two Hague Conferences* (1908), 277 ff.

The plan contemplated a permanent commission of five members — one from each nation to be chosen by that nation, one to be chosen by each nation from a foreign nation, and a fifth to be selected by agreement of the parties. Like the Hague convention it left the parties at liberty each to decide for itself, at the conclusion of the investigation, what action it would take in the matter. Thirty treaties embodying this scheme were signed, and twenty-one of them actually came into force — nine with European powers, eleven with Latin-American countries, and one with China. The permanent commissions provided for by these treaties have been set up under but ten of them, and with respect to only two has the United States filled vacancies as they have occurred. Thus the treaties have largely gone by default, so to speak.[17]

As has been noted, the Bryan treaties are bilateral. The same principle has been embodied in at least two multilateral treaties — one between Argentina, Brazil, and Chili in 1915, and the other between the five Central American Republics, adopted at the Central American Conference at Washington in 1922–3. The latter treaty, however, follows the Hague rather than the Bryan plan, in that it applies only to disputes as to breaches of treaty obligations which " affect neither the sovereign and independent existence of any of the signatory republics, nor their honor or vital interests." The commission provided for is permanent. The Bryan principle was also embodied in a Pan-American treaty signed at the Santiago Conference in 1923. This treaty covers all controversies not otherwise settled, and provides for a special commission in each case, with one year in which to report, during which time concentration of troops on the frontier and hostile acts are forbidden.[18]

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[17] R. L. Buell, *International Relations* (Rev. Ed., 1929), 624 ff. For the text of these treaties see Scott, *op. cit.* See also Garner, *op. cit.*, 544; P. C. Jessup, " The United States and Treaties for the Avoidance of War," *Int. Con.*, No. 239 (April, 1928), 25; Denys P. Myers, The Commission of Inquiry: The Wilson-Bryan Peace Plan, *W. P. F. P. Series,* Vol. III, No. 11, Part I (1913): The Conciliation Plan of the League to Enforce Peace, with American Treaties in Force, *Ibid.*, Vol. VI., No. 5 (1916); Arbitration and the United States. A Summary of the Development of Pacific Settlement of International Disputes, with Special Reference to American Policy, *W. P. F. P.*, Vol. IX, 451 (1926), 534 ff.

Value of the Commission of Inquiry

Although little practical use has thus far been made of the international commission of inquiry,[19] in theory it constitutes a valuable addition to the machinery of international adjustment. It has been compared to an international jury; it goes upon the theory that disagreements may arise which an impartial investigation by a fact-finding body of this character might serve to clear up. Inability to ascertain the precise facts involved in a controversy is often a serious obstacle to its settlement. It is a process which requires deliberate, painstaking investigation, and one to which diplomacy is ill-adapted, especially in cases calling for the services of military, naval, or other experts.

True, the causes of many dangerous international disputes lie deeper than mere differences of view on issues of fact; but as to such disputes, even, the delay in appealing to force necessitated by the inquiry of a commission would itself make for peaceful settlement, whatever the findings of the commission might be; the cooling-off interval is psychologically valuable. As to disputes which really turn upon conflicting versions of a transaction or situation — the Dogger Bank case is in point — the commission plan is doubly valuable. Deliberate resort to forcible measures would be less likely after the facts involved in a dispute had been elucidated by a competent, impartial body of investigators, whose findings, published to the world, would by their influence upon public opinion tend strongly to throw guilt upon a party which refused to abide by them even though not legally bound to do so.[20]

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[18] Buell, *op. cit.,* 625–626. These American treaties are referred to more at length in Ch. XXXII, Sub. V.

[19] Garner, *op. cit.,* 541–542, cites two cases since 1907. For data on the three cases thus far referred to Commissions of Inquiry see *W. P. F. P.,* Vol. IX, p. 470.

[20] Garner, *op. cit.,* 526 ff., has a good discussion of International Commissions of Inquiry.

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CHAPTER XVII

NATURE AND HISTORY OF ARBITRATION

I. ARBITRATION A JUDICIAL PROCEDURE

Arbitration is the most familiar of the methods of pacific adjustment of disputes not settled by diplomacy. In the strict sense of the term, arbitration is essentially a judicial procedure. The arbitration convention concluded at the Second Hague Conference characterized arbitration as follows:

> International arbitration has for its object the settlement of differences between states by judges of their own choice and on the basis of respect for law.

Arbitration in the technical sense is better defined by describing it as "an impartial adjudication according to law, and that before a tribunal of which at least a single member, who is commonly a national of a state neutral to the contest, acts as umpire."[1] In arbitration proper all the essential elements of judicial procedure appear. The dispute or matter in issue between the states is submitted to arbitrators or judges, who after hearing render a judgment or award on the basis of the facts established by proof and the legal rules applicable thereto. From the fact that in its early history arbitration was deemed to be more in the nature of a compromise of conflicting claims, and because the term is now applied to the adjustment of industrial disputes and other kinds of settlement by compromise, it is not uncommonly considered to be in marked contrast to the process of judicial decision — to involve, in fact, the spirit and procedure of diplomacy, oftentimes, rather than that of ordinary judicial determination.

John Bassett Moore, probably the leading authority on arbitration, contends that this assumption is unfounded. In his address at the Long Beach Conference on the Foreign Relations of the United States in 1917, he said:

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[1] Charles C. Hyde, *International Law Chiefly as Interpreted and Applied by the United States* (1922), Vol. II, 111–112. On the different meanings of the term "arbitration" in current usage see T. Baty, *International Law* (1909), Ch. I.

> I venture to assert that the decisions of those international tribunals are characterized by about as much consistency, by about as close an application of principles of law, and by perhaps as marked a tendency on the part of one tribunal to quote the authority of tribunals that preceded it, as you will find in the proceedings of our ordinary judicial tribunals. One cannot study these records without being deeply impressed with that fact, and without discovering how lacking in foundation is the supposition that when we talk of the " judicial settlement " of international disputes we are presenting some new device or new method.[2]

Ralston, a writer who has had practical experience in arbitral proceedings, inclines to this view. He characterizes as at least questionable the assumption that " there has been a disposition among arbitrators to compromise and adjust differences between parties, and that the purpose of an international tribunal is to get away from this disposition to compromise and to rest everything upon the basis of absolute law."

He adds that the great distinction between courts of arbitration and the new Court of International Justice, for example, " lies not in the rules controlling the court but in the manner of selecting the judges, their fixity in office, and their independence of the parties." [3]

However this may be, there are some substantial differences between a court of arbitration and a court of law. Perhaps the most fundamental distinction is that in the former the parties select their own arbitrators, while in the latter they have no discretion in the choice of judges.[4] This difference is of practical importance, but not as bearing upon the character of the procedure in the two kinds of tribunals, once the arbitrators have been chosen. So also, arbitrators are often allowed a wider discretion in considering the grounds of their decision than judges enjoy, it being stipulated in the agreement under which the case is submitted that they may decide it on principles of equity and justice; and even without such a stipulation, the want of established rules of law precisely applicable to the case may necessitate a resort to considerations of practical justice or expediency.[5]

[2] Vol. VII *Proc. Acad. of Polit. Sci.,* 22.

[3] Jackson H. Ralston, *The Law and Procedure of International Tribunals* (Rev. Ed., 1926), Foreword, 36–37. For a presentation of the contrary view see Dr. Hans Wehberg, *The Problem of an International Court of Justice* (1918), Ch. II.

[4] Sir Thomas Barclay, *New Methods of Adjusting International Disputes and the Future* (1917), 51.

[5] It may be noted, however, that this tendency to decide according to the equities of the case rather than in strict conformity to the law is not entirely

Limitations Upon the Arbitral Principle

But generally speaking, the arbitrator is a judge, and the arbitral proceeding judicial in all essential respects. It follows, therefore, that technically arbitration is not appropriate in cases where the questions at issue are not susceptible of determination in the judicial way, or as phrased in the Taft arbitration treaties, later referred to, by the application of the principles of law or equity. Such issues very frequently arise; they grow out of conflicting policies of one sort or another — competitions for territory, or for commercial advantage, or for national prestige. They are essentially political in character and therefore outside the scope of judicial settlement. Analogous issues are to be found in the domestic sphere. By no means are all differences between man and man susceptible of settlement in courts of law. Controversies based upon differing beliefs or opinions, or even on conduct not definitely brought within the domain of law, are ordinarily " non-justiciable," to borrow another term from the Taft treaties, it being a matter of domestic policy as to whether or not they shall be subjected to legal regulation.

Of late, however, there has been a tendency to use the term " arbitration " in a wider sense, as being applicable to all kinds of controversies, irrespective of their nature. Several instances of this broader usage will be referred to in other connections.[6] Thus international usage appears to be losing the former distinction between arbitration proper and what is known as conciliation — between cases suitable for submission to the binding award of arbitrators, and those to which a process of investigation and advice alone is appropriate.

II. ARBITRATION IN ANCIENT GREECE AND ROME

Arbitration is nothing new in the practice of nations. It was well established in the ancient Greek world, where it attained a relatively high degree of development in the relations of the Greek

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foreign to municipal courts. See T. W. Balch, *Arbitration as a Term in International Law* (1920), 34 ff.; John Bassett Moore in E. A. Walsh (Ed.), *History and Nature of International Relations* (1922), 165–167. B. N. Cardozo, *The Nature of the Judicial Process* (1921), Lecture III, on " The Judge as a Legislator."

[6] This appears in recent discussion of universal, or " all in " arbitration, by which is meant simply the elimination of war as a means of ending international disputes by substituting some peaceful method of settlement.

City States. Many classes of cases, such as boundary disputes, alleged failures to pay money due under compact, violations of treaty, and the like — issues now generally held to be arbitrable — were commonly submitted to arbitration. In some cases the arbitrators were charged with the duty of settling all the differences outstanding between the parties — an ancient precedent for the modern inclusive arbitration treaty. In rare cases arbitration treaties were adopted with prospective effect; so also, there might be inserted in treaties of peace or alliance clauses binding the contracting parties to accept an arbitral decision of any dispute that might arise thereunder.

Sometimes a friendly state was accepted as arbitrator, or perhaps some distinguished person in official position. The normal appeal, in the days of Hellenic freedom, was to another Greek city; in the era of Roman domination it was to the Roman Senate. Procedure in the Greek arbitration was strikingly like that of modern times. Arbitration in the Greek world served a valuable purpose both in averting war between state and state and in bringing to a speedier end conflicts that might otherwise have ended in the destruction of one of the belligerent powers, or the ruin of both. The Greek states resorted to arbitration only among themselves.[7]

Rome never consented to arbitrate her disputes with neighboring states. She compelled her subject peoples and provinces to resort to arbitration rather than to war, but such arbitrations were devices of constitutional government rather than of international practice. Her position as mistress of the world negatived the idea of arbitration as a procedure between sovereign states. During the Middle Ages, under the dominating influence of the Church and of feudal ideas, there was a revival of arbitration; but after the Papacy had renounced its civil authority, and absolute monarchies had become established on the ruins of feudalism, arbitrations became more rare. They decreased in number during the fourteenth and fifteenth centuries, and apparently from the end of the sixteenth century to the French Revolution they had almost disappeared from international practice.[8]

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[7] On this general subject see M. N. Tod, *International Arbitration Amongst the Greeks* (1913); also C. Phillipson, *The International Law and Custom of Ancient Greece and Rome,* Vol. II, 128 ff. (1911).

[8] See full historical note in John Bassett Moore, *International Arbitrations* (1898), Appendix III, 4821 ff. See also R. C. Morris, *International Arbitration and Procedure* (1911); James Brown Scott, *The Hague Peace Conferences of 1899 and 1907* (1909), Vol. I. Ch. V. T. W. Balch, *Legal and Political Questions Between Nations* (1924), has interesting comment.

III. Arbitration in the Nineteenth Century

The practice of arbitration, which had thus practically lapsed, was revived by the Jay treaty of 1794 between the United States and Great Britain, under which three mixed commissions were provided for to deal with matters in controversy between the two countries. From that time on arbitration was resorted to with increasing frequency, not only between these nations but throughout the Western World. It is estimated that between 1794 and 1900 there were more than four hundred cases of arbitration or quasi-arbitration of differences between states, embracing almost every conceivable kind of dispute.[9]

Of these perhaps the most important was the Alabama claims arbitration under the Treaty of Washington — the famous Geneva arbitration. This submission by two powerful nations of a controversy which had become acutely political, and the prompt payment of the award by the defeated party, was an impressive demonstration of the value of arbitration, and from that time on the arbitration movement gained momentum, both in Europe and America.

Four stages may be noted in the development of arbitration: First, that of the purely voluntary submission of a dispute after it arises, the obligation to arbitrate being embodied in an agreement applicable to that case alone; second, the inclusion in treaties of clauses whereby the parties agree to arbitrate questions arising thereunder, or disputes either specifically or generally referred to; third, the conclusion of special permanent treaties of arbitration, a practice which became general in the latter part of the nineteenth century; and fourth, the era of general agreements for obligatory arbitration, the latest phase of which is illustrated by the Kellogg Pact.[10]

The Compromis

Arbitrations under general treaties involve, for each case submitted, a supplementary agreement, called a *compromis,* wherein the issue to be arbitrated is defined, the arbitrators named or the method of their selection prescribed, the principles of law or equity to govern the case laid down, if any are agreed upon, and the formalities of the proceedings detailed. In connection with the so-called Hay treaties of 1904, the United States senate held that this preliminary agreement fell within the treaty-making power, under the constitution, and that therefore it must be made by the executive by and with the advice and consent of the senate, like any treaty. The soundness of this position was denied by authorities both in the senate itself and outside. It had the effect, not only of defeating these particular treaties, but of differentiating American practice from that of the governments of Europe generally, where under general arbitration treaties the formulation of the *compromis* is deemed a mere matter of procedure. It has been pointed out, further, that senate participation in the making of the *compromis* tends to weaken the obligations assumed under such general treaties, inasmuch as the senate is thus in position to block the submission of a dispute which in the view of the executive is covered by the treaty, and that thus the progress of arbitration in the United States has been retarded.[11]

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[9] J. W. Garner, *Recent Developments in International Law* (1925), 465 and note.

[10] A. S. Hershey, *Essentials of International Public Law and Organization* (Rev. Ed., 1927), 467 ff.

In the earlier stages of arbitration parties to disputes had been obliged to set up their own tribunals, and formulate their own rules of procedure, for each case as it arose; at length plans for a more general and permanent system began to appear. In 1875 the Institute of International Law proposed a code of rules of arbitral procedure;[12] and in 1889 the First Pan-American Conference at Washington drafted a complete system of arbitration, but it failed of adoption. At the Columbian exposition of 1893 a set of rules for the organization of an international tribunal of arbitration, drafted by an American committee, was proposed to the Universal Peace Congress; and finally, the Inter-Parliamentary Union, in conference at Brussels in 1895, adopted a resolution concerning the establishment of a permanent court of international justice.[13]

IV. THE HAGUE PERMANENT COURT OF ARBITRATION

These successive schemes evidenced a growing sense of the need of internationalizing arbitration, and of placing it upon a more permanent basis. The atmosphere of controversy is unfavorable to the submission of disputes and agreement upon rules of procedure. It was widely felt that arbitration would be encouraged by some sort of a permanent tribunal, which would serve as a standing invitation to states to refer their disputes to arbitration. To the establishment of such an institution the First Hague Conference addressed itself. The great Convention for the Pacific Settlement of International Disputes, adopted by the Conference, set up a Permanent Court of Arbitration, with an international bureau at The Hague to serve as a record office and a secretariat, and as a channel of communication relative to the Court. A permanent administrative council, made up of the diplomatic representatives of the signatory powers at The Hague and the Netherlands minister of foreign affairs, controls the bureau.

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[11] On this point see J. B. Moore, *International Law and Some Current Illusions* (1924), 85 ff.; also James Brown Scott in 2 *A. J.*, 387 ff. and 624 ff.

[12] For text of these rules see J. B. Moore, *op. cit.*, Vol. V, pp. 5058–5062.

[13] This plan, and that proposed to the Universal Peace Conference, may be found in Moore, *op. cit.*, Vol. V, pp. 5062–5066.

The court itself is made up of members selected by the signatory powers, each designating "four persons of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrators."[14] Parties desiring to have recourse to the Permanent Court must choose their arbitral tribunal from the general list of members of the court. If they fail to agree directly on the composition of the tribunal, each party appoints two arbitrators and these choose an umpire, further provision being made for the choice of an umpire if the four cannot make a selection. The convention embodies rules of procedure applicable to arbitral proceedings, unless the parties agree on other rules.

The Second Hague Conference of 1907 modified in some particulars the plan adopted by the First, but preserved its main features unaltered. To guarantee more impartial tribunals in particular cases it was provided that of the two arbitrators appointed by each party, "one only can be its national, or chosen from among the persons selected by it as members of the Permanent Court." This provision makes it certain that the tribunal will have a majority of neutral members. So also, the rules of procedure were amplified, perhaps the most important change relating to the framing of the *compromis* or preliminary agreement setting forth the points at issue and the arrangements for the conduct of the case.

To encourage resort to the Court, the Convention makes it the duty of the contracting powers, in case of a threatened dispute between two or more of them, to remind the latter that the Permanent Court is open to them, and such reminder can only be regarded as a friendly act.[15]

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[14] These national groups are utilized as nominating bodies for the World Court bench. See Ch. XXXIV, Sub. II.

[15] For text of the Convention adopted by the Second Peace Conference see Malloy, *Treaties, Conventions, International Acts, Protocols and Agree-*

Hague Tribunal not a True Court

It is to be noted that while the Hague tribunal is called a Permanent Court, it is not a court, strictly speaking. Its members may or may not act in a judicial capacity, depending upon the selections of arbitrators made by parties resorting to the tribunal. Hence there can be no continuity of active service on the part of the members, no corporate character, no consistent building up of precedents of law and of rules of procedure characteristic of the true Court. The "Court" is simply a repository of potential "Courts" — a panel of suitable persons appointed by the member states from which arbitral boards or tribunals can be selected by states which agree upon that method of settling their disputes. As a Dutch jurist once put it, the Hague Convention simply established a secretariat and a list.

These actual "Courts" are transitory, coming into existence for particular cases and then melting into the general panel, so to speak. The panel itself is permanent, the members being appointed for a term of six years. So also, the Bureau and Administrative Council are permanent, and the seat of the Permanent Court is fixed at The Hague. Again, it should be emphasized that resort to the Court is purely voluntary. The convention embodies no recognition of compulsory arbitration as to any class of cases whatever. In that respect it registered no advance in international practice — in fact, it hardly came up to the standards set by some earlier treaties.

Nevertheless the Permanent Court was an achievement of the first magnitude. The debates on it in the two conferences powerfully attracted the attention of the world to the importance and the feasibility, of arbitration as a means of international adjustment. Its moral effect was evidenced by the large number of bilateral treaties negotiated in the period between the two conferences. This movement was anticipated by the provision in the convention whereby the signatory powers reserved the right to conclude "new agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it." Well towards a hundred such bilateral treaties were negotiated in the decade following the First Hague Conference. Of these the United States was a party to twelve — the so-called

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ments between the United States of America and Other Powers, Vol. 2, 2220 ff. A table showing the states which ratified the Hague Convention may be found in 5 *A. J.*, 769–770 (1911).

Root treaties of 1908. All these treaties specified the Hague Permanent Court of Arbitration as the tribunal to be resorted to thereunder.[16]

Work of the Hague Permanent Court

So much for the epoch-making arbitral machinery set up by the Hague Conferences. What record of achievement has it to its credit? Up to 1928 it had rendered some nineteen awards in cases to which seventeen different states were parties.[17] Among the states resorting to the Court most frequently have been the United States in six cases, Great Britain in six, and France in nine. It is pointed out as an interesting feature of the work of the Court that the parties to cases before it have shown an increasing disposition to select the same arbitrators in successive cases, thus giving the tribunal in some degree the merit of continuity.[18] If this record is not impressive, in view of later developments in the field of judicial settlement; if the Court has failed, perhaps, to meet the expectations of those who organized it, it has amply justified the experiment. Some of the cases disposed of have been relatively unimportant; others might have led to serious consequences if they had continued to disturb the relations of the parties. It is to be borne in mind that in every case the Court has succeeded where diplomacy had failed. Notable, also, has been the fact that without exception the awards have been complied with by the losing party without evasion or protest. But the value of the Hague Permanent Court is not to be estimated on the basis of its work alone. Reference has been made to the large number of arbitration treaties negotiated in the decade immediately following the establishment of the Court. This list of bilateral treaties of arbitration has steadily lengthened, until almost the entire world has been " bound together by a veritable network of arbitration engagements." [19]

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[16] For a list of these treaties up to the middle of the year 1908 see 2 *A. J.*, 824. The group of treaties negotiated by the United States in 1904 — the so-called Hay treaties — failed of ratification.

[17] But in two of these cases only a minority of the arbitrators were members of the Hague Court. For tabulations of these cases practically down to date see Garner, *op. cit.*, 481, and *W. P. F. P.*, Vol. IX, 468–469. These lists differ. Garner omits No. 14 in the latter list — France-Italy — evidently because it was settled by the parties directly; and the last case before the Court — United States-Netherlands — was submitted after publication of Garner's book. For this case, which concerned sovereignty over the Island of Palmas, see 22 *A. J.*, 867 (1928).

[18] By Garner, *op. cit.*, 485 ff., who summarizes the facts involved, and the findings, in the first seventeen cases. See G. G. Wilson, *Hague Arbitration Cases* (1915), also " Work of the Hague Tribunals; what has been accomplished by the First and Second World Courts," 21 *Current History*, 383–390 (1924).

That this growing number of arbitration treaties has had more than theoretical significance is indicated by the increasing frequency with which arbitration has been resorted to. It is probably within bounds to say that two hundred or more cases have been arbitrated before mixed commissions and other bodies since the Hague Permanent Court was established.[20] These cases have taken a wide range in point of character, some involving mere pecuniary claims, others questions of grave import. It is clear that as the result of this experience arbitration has demonstrated its perfect feasibility as a means of adjusting numerous classes of international disputes where direct diplomacy has failed.

V. NON-ARBITRABLE CONTROVERSIES

But the arbitration movement must be viewed from another angle. It may be said with some justice that this array of arbitration treaties and arbitrations, impressive as it is, has not, after all, greatly promoted peace, because arbitration, in practice, has stopped short of those international differences wherein lie the issues of peace or war. There is a regrettable measure of truth in this contention, and for two reasons. In the first place, as has been suggested, political differences are not, strictly speaking, arbitrable. The distinction between legal questions, which are generally considered arbitrable, and political questions, which are ordinarily deemed outside the scope of arbitration, is neither clear nor altogether satisfactory. In general, legal disputes are those wherein the rights of the parties are governed by fairly well-settled rules of international law; so that once the facts, if in dispute, are settled, a court is able to declare the law applicable thereto. Political questions, by way of contrast, are held to be those not covered by definite rules of international law whereby the rights of the parties to the dispute are ascertainable. Such questions often lie within the realm of policy rather than that of law; or they may concern abstract principles of international law, like that of state independence or state equality, which states are unwilling to leave to the decision of an arbitral tribunal.[21]

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[19] Garner, *op. cit.*, 507.

[20] For references to some of the more important of these cases see Garner, *op. cit.*, 503 ff.

[21] Such questions would be held to be covered by the clauses in arbitration treaties excepting national honor, vital interests, and independence, referred to below.

It is impossible to make perfectly clear distinctions between these two classes of questions, as a practical matter. For example, a dispute involving the interpretation of a treaty, or the alleged violation of a treaty — legal from one point of view — might be held so vital to the disputing states as to be in fact political and therefore non-arbitrable. Indeed, there is something to be said for the view that the distinction lies " less in the fundamental nature of the question than in the willingness of the nation to submit it to judicial determination; in the importance which the question is deemed to possess for the national interests than in its source." [22] From this standpoint the test is subjective rather than objective. Whatever the distinction, either in theory or practice, it is certain that it has limited the usefulness of arbitration, sometimes affording nations a pretext for refusing to arbitrate questions which might have been settled by judicial procedure. With the gradual extension of the sphere of international law into new fields of legal control, the legitimate scope of arbitration proper will be correspondingly broadened.[23]

VI. Obligatory Arbitration

In the second place, throughout the period now under review, the more important nations pretty consistently refused to agree, in advance, to arbitrate any particular class of cases. While professing loyalty to the principle of arbitration, they restricted their practice of it to such cases as they might see fit, at the moment, to arbitrate. In other words, arbitration was voluntary rather than obligatory. Without disparagement of the value, for international peace, of arbitration of the voluntary type, it is readily seen that the gulf between peace and war can never be effectively bridged so long as nations are at liberty to make their quarrels occasions for war. The ultimate step in the evolution of arbitration must be a general international engagement, or an adequate series of special engagements, to arbitrate all future differences susceptible of that method of settlement.

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[22] Prof. E. M. Borchard, Address before the American Society of International Law, on " The Distinction between Legal and Political Questions," *Proc.* (1924), 50 at p. 53. See same *Proceedings* for addresses on the same subject by Prof. C. G. Fenwick and Prof. M. O. Hudson. On this distinction see also Balch, *op. cit.*, entire. Charles Warren, *The Supreme Court and Sovereign States* (1920), Ch. III, on " Courts and Justiciable Cases," discusses this question from the standpoint of the jurisdiction of the Supreme Court of the United States.

[23] For a suggestive discussion of non-justiciable disputes, with references to provisions dealing with such disputes in several peace schemes proposed during the World War, see L. S. Woolf, *Framework of a Lasting Peace* (1917), 26 ff.

Prior to the World War obligatory arbitration had gained scant recognition. The principle had been repeatedly affirmed, and some abortive attempts had been made to secure its recognition as a rule of practice. In 1883 it was embodied in a treaty negotiated by the United States and Switzerland, which failed of ratification; and in 1897 the principle was discussed in connection with the proposed Pauncefote treaty between the United States and Great Britain.[24] In 1898 a treaty of universal obligatory arbitration was entered into between Argentina and Chili.

Obligatory Arbitration at the Hague Conferences

Nor did obligatory arbitration fare much better at the Hague Conferences. At the first Conference, in 1899, universal obligatory arbitration was considered so utterly impossible that no state even proposed it; moreover, the Conference, while strongly in favor, theoretically, of obligatory arbitration for restricted classes of disputes, was unable to agree as to what these classes should be. In practical results the Second Hague Conference, of 1907, was hardly more fruitful, although the principle of compulsory arbitration was exhaustively debated with a view to agreement on some specific class or classes of cases to which it should apply. Many such classes were proposed, — no less than twenty-four in all — but with one exception none received anything like a unanimous vote. The most thoroughly debated proposal, that of the United States, may be referred to as illustrative of this memorable attempt to gain recognition for obligatory arbitration. This proposal was as follows:

> Differences of a judicial kind, and before all those relating to the interpretation of treaties existing between two or more of the contracting states, which may arise between the said states in the future, and which shall not have been settled by diplomatic means, shall be submitted to arbitration, on the condition that they affect neither the vital interests nor the independence or honor of either of the said states, and that they do not affect the interests of other states not parties to the controversy.[25]

This proposition was strongly supported — in fact it received a substantial majority vote — but failed of adoption. The Conference did, however, recognize the principle of compulsory arbitration as to one specific class of cases, in the adoption of the so-called Porter Plan relating to the collection of contract debts. Under this plan, which was based upon the so-called Drago Doctrine, the signatory powers agree not to have armed recourse for the collection of contract debts claimed by the government of one country as due to its citizens from another, unless the debtor state refuses to arbitrate, or accepting arbitration, refuses either to settle the terms of the arbitration or to submit to the award when made.[26] Moreover, the Conference, though unable to advance materially the practice of obligatory arbitration, went on record as in favor of the abstract principle, and declared that "certain disputes, in particular those relating to the interpretation and application of the provisions of international agreements, may be submitted to compulsory arbitration without any restriction." [27]

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[24] For the text of this interesting document see Sir Thomas Barclay, *op. cit.*, Appendix IV.

[25] W. I. Hull, *The Two Hague Conferences* (1908), 336 ff.

Bilateral Treaties of Compulsory Arbitration

Meanwhile, following the first Conference, a number of treaties providing for the arbitration of all disputes not settled by diplomacy were entered into, but for the most part by the smaller states; while a still larger number, obligatory on their face, excluded from their operation certain important classes of disputes, especially those involving the vital interests, independence or national honor of the parties, or those affecting the interests of third parties.[28]

Obviously these exceptions seriously weakened the treaties, opening wide the door for plausible refusals to arbitrate disputes entirely appropriate for that method of settlement. What differences may not a sensitive state make a point of honor or a hazard to vital interests? [29] It will not do to assert cynically that these treaties were meaningless evidences of mere lip service to arbitration because of these highly elastic reservations; but confessedly they left uncovered the most dangerous types of international dispute. "These phrases," says Lawrence, "are vague and indefinite and lend themselves to the purpose of any statesman who may desire to proceed to extremities. An interest becomes vital when a government chooses to consider it as such, and there is no fixed criterion of national honor."[30]

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[26] See Hull, *op. cit.*, 350 ff.

[27] For a general account of the consideration of obligatory arbitration at the Hague Conferences, see Hull, *Ibid.*, 297–370; Scott, *op. cit.*, Vol I, Ch. VII.

[28] Among these treaties were twelve negotiated by the United States with foreign powers, in 1908–1909 — the Root treaties. All were for five-year periods; some have been allowed to lapse and some have been extended. For table showing their status in 1926 see *W. P. F. P.*, Vol. IX, 523.

[29] It will be recalled that the British government stoutly maintained at first that the Alabama claims involved the honor of the nation, and therefore could not be arbitrated. On the effect of these "honor," "vital interests," and "independence" exceptions, see J. B. Moore, Long Beach Conference Address, Vol. VII *Proc. Acad. Polit. Sci.* (1917), Part I, 26–27; Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), 164; Barclay, *op. cit.*, Ch. VI.

The Taft Treaties

In 1911–1912 the Taft administration made a determined effort to embody the principle of compulsory arbitration, in a qualified form and as to a restricted class of cases, in treaties negotiated with Great Britain and France. These treaties in terms covered all differences, not settled by diplomacy, "relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity." It was provided that all such differences should be submitted to the Hague Permanent Court of Arbitration, or some other arbitral tribunal agreed upon.

Thus the treaties applied to "justiciable" questions, which are defined as questions appropriate for decision in accordance with legal or equitable principles. But how and by whom was this test to be applied in specific cases? Who should decide the issue when the parties disagreed as to the justiciability of a question? To meet this situation the treaties provided for a Joint High Commission of Inquiry, to which, on request of either party, should be referred the question whether a given controversy fell within the scope of the treaty. These Commissions of Inquiry were to consist of three nationals of each of the parties, unless they saw fit to constitute it in some other way for the purposes of a particular case; and its decision that the difference under consideration was within the scope of the treaty, if concurred in by all, or all but one, of the members of the commission, was to be binding upon the parties. The report of the commission, which might include appropriate recommendations and conclusions based upon the facts elucidated, was not to be regarded as decisive either as to law or fact, or as having the character of an arbitral award.

This proposal to utilize the Commission of Inquiry in settling the preliminary question whether a dispute fell within or outside the scope of the agreement to arbitrate, was the distinctive feature of these treaties. President Taft led a determined campaign for their ratification, but a majority of the Senate Committee on Foreign Relations held that for the Senate to consent to the reference of the question of justiciability to a commission over which it had no control would be an unconstitutional delegation of its treaty-making functions. This conclusion was opposed by Senator Root, among others. The treaties were ratified after the provisions referring to the peculiar functions of the Commission of Inquiry had been eliminated; and as this amendment went to the heart of the scheme, President Taft pigeon-holed the treaties.

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[30] *The Principles of International Law* (7th Ed., 1923), 579.

VII. Arbitration in the Western Hemisphere

For twenty-five years before the World War a campaign to further arbitration, collateral to the general movement above described, had been under way in the Western Hemisphere. At the first Pan-American Conference of 1889–1890 an elaborate plan for a permanent tribunal of arbitration was drafted, but failed of ratification by the governments.[31] It declared arbitration to be a "principle of American international law," and extended it compulsorily to "all controversies concerning diplomatic and consular privileges, boundaries, territories, idemnities, the right of navigation, and the validity, construction, and enforcement of treaties." It further declared arbitration obligatory in all other cases, "whatever may be their origin, nature or object," with the exception of those which "in the judgment of any one of the nations involved in the controversy, may imperil its independence."

Another treaty of similar import was signed by a number of American Republics at the second Pan-American Conference of 1901, but this also failed to secure ratification. At the third Pan-American Conference, in 1906, it was proposed that the delegates from the American Republics to the Second Hague Conference, to be held the following year, be instructed to endeavor to secure in that Conference "the celebration of a general arbitration convention so effective and definite that, meriting the approval of the civilized world, it shall be accepted and put in force by every nation."

At the second Pan-American Conference a treaty was signed providing for the arbitration of pecuniary claims by the citizens of one country against the government of another. This treaty was approved and extended at the third Conference, and a new convention on pecuniary claims, drafted by the fourth Pan-American Conference, was ratified by a number of Republics.[32]

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[31] For the text of this remarkable document see Darby, *International Tribunals* (4th Ed., 1904), 380 ff.

The Conference on Central American Affairs at Washington, in 1923, adopted a convention for the establishment of International Commissions of Inquiry, and to this the United States became a party; but this convention was more restricted in its scope than the Bryan Treaties for the Advancement of Peace, in that it went back to the familiar formula of the earlier treaties excepting disputes involving honor, independence, and vital interests. So also, at the fifth Pan-American Conference at Santiago, Chili, in 1923, a convention was signed, along the general lines of the Bryan treaties, providing for a Commission of Inquiry to which are to be submitted all controversies between the American Republics not adjusted by diplomacy.[33]

VIII. THE SANCTIONS OF ARBITRATION TREATIES

It is significant that the treaties reviewed above make no provision for their enforcement — for sanctions, to use the technical term. They go upon the theory that when their provisions are invoked the parties will abide by the result. The Hague Permanent Court Convention of 1907 made this theory explicit by declaring: "Recourse to arbitration implies an engagement to submit in good faith to the award." [34]

Does this absence of express sanctions tend to make these treaties a sham and pretense, or seriously to weaken their authority? Much the same considerations apply to arbitration treaties as to international law in general.[35] Whether or not they would have been strengthened by provisions for positive sanctions for the enforcement of awards is an academic question; the nations were not ready to go that far. Indeed, no sanction short of war, or the threat of war, was available to the parties — and the purpose of the treaties was to prevent war. Collective sanctions, as worked out in the Covenant of the League of Nations, necessitated an international organization that did not then exist.

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[32] For texts of Inter-American arbitration treaties see W. R. Manning, *Arbitration Treaties among the American Nations to the Close of the Year 1910* (1924).

[33] These Commission of Inquiry conventions are referred to at length in Ch. XXXII, Sub. V, as is a convention on arbitration and conciliation signed by the American Republics at a Conference held in Washington in January, 1929.

[34] It is also made specific and placed under penalties in the Covenant of the League of Nations.

[35] *Ante.* Ch. XII.

So that the treaties rested for their observance upon the good faith of the parties, steadied and strengthened by public opinion — as indeed do all subsequent arbitration treaties. Nor has this sanction been found wanting so far, contrary to a quite general opinion. Moore asserts that "the cases have been few, very few indeed, in which the awards of international tribunals have not been accepted and loyally carried out."[36] Lawrence states the point even more emphatically, asserting that in only one instance among the many arbitrations of the nineteenth century, was there non-compliance with the decision, and then the truthful reason was given that the arbitrator had gone beyond the powers conferred upon him by the instrument of reference.[37] Of course arbitral awards, like domestic judgments, may be attacked and set aside on the ground that the arbitral tribunal has been guilty of fraud or corruption — in other words, that there never was a binding award, or that the arbitrators exceeded their authority;[38] but with negligible exceptions the rule of good faith outweighs any considerations prompting the dissatisfied party to repudiate the award. The significance of this conclusion is to be emphasized, for it touches international government at many points. Says Lawrence:

> These facts are very remarkable. They show that civilized nations, like reputable individuals, have feelings of honor and shrink from breaking their plighted word. Self-respect and a regard for their standing in the society to which they belong combine to make them submit to awards which are sometimes very unpalatable. And prudence points in the same direction; for surely the most unsuccessful arbitration is a smaller calamity than the most successful war.[39]

Professor Garner, discussing the binding validity of arbitral awards in the light of modern experience, reaches the same conclusion:

> The sentiment of duty, of honor, a decent respect for the opinions of mankind, will ordinarily prove a sufficient sanction. Few if any civilized

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[36] Moore, *op. cit.*, 23.

[37] *International Problems and Hague Conferences* (1908), 81. The case referred to was the arbitration between the United States and Great Britain over the Northeastern boundary, in 1831.

[38] C. G. Fenwick, *International Law* (1924), 405.

[39] *Op. cit.*, 82.

states would be willing to incur the obloquy, the odium and the moral isolation which would be visited upon them if, after having voluntarily appealed to arbitration, they should refuse to accept a decision rendered in full accord with the terms of the arbitral agreement.[40]

These authoritative views, to which most students of international relations would subscribe, are highly significant as bearing upon the future of arbitration; they apply with equal or even greater force to the judgments of the Permanent Court of International Justice, and go far to refute the argument against the Court based upon the assumption that its judgments lack the full judicial quality because unsupported by effective sanctions. This point is discussed in Chapter XXXIV.

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[40] *Op. cit.,* 519 and note.

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CHAPTER XVIII

INTERNATIONAL COURTS OF JUSTICE[1]

I. ARBITRAL TRIBUNALS AND COURTS OF JUSTICE DISTINGUISHED

It has appeared that arbitration is essentially judicial in character, but that an arbitral tribunal differs in important respects from a true court of justice. First, it is distinguishable in point of personnel. The true court is composed of a fixed number of judges, permanent in tenure and salaried by the state; while the arbitral court is made up of persons selected by the parties to the cause to be determined and for that cause alone, passing out of existence as a body when its judicial function has been performed. Second, there is a material difference between the two tribunals in point of judicial process. The true court decides on the basis of law, its business being to ascertain the legal principles applicable to the case before it and to embody the results of its deliberations in a judgment. In so doing it recognizes the doctrine of precedents, and normally considers itself bound by its own prior decisions. It has corporate continuity, and thus is enabled to build up a consistent body of case law.

The arbitral tribunal, on the contrary, has no continuity of existence; it is an *ad hoc* body, called into existence for a particular case, the determination of which exhausts its functions. Thus it has itself created no prior precedents, and feels in no wise legally constrained to follow those established by other arbitral bodies. Moreover, while normally it decides on the basis of law — either the general law or the law which the parties themselves agree shall be controlling in the case — it is, perhaps, somewhat more at liberty than the Court of Justice — often, indeed, by express consent of the parties — to reach conclusions by the application of equitable principles.

Whatever may be said for the arbitral award, as compared with the judicial decision, as an instrument of international justice in particular cases, it is clear that from the standpoint of international law the true court of justice has distinct advantages. It ensures a more permanent, and therefore more experienced, judicial personnel, and promotes the development of an authoritative body of precedents precisely analogous to the case law of the several states.

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[1] The Permanent Court of International Justice is discussed in Ch. XXXIV.

The Judicial Function and the Development of International Law

Some writers even go so far as to maintain that the function of an international court as a means of building up a system of international law, and thus of establishing the legal basis of international government more securely, is even more important than that of serving as an agency for the settlement of international disputes. They stress the compromise nature of arbitration, holding by way of contrast that by a purely legal decision the right or wrong of a dispute can be brought into clear light, so that the state in the wrong will see that it is wrong, while under arbitration the state which gets only half its due as the result of compromise will be dissatisfied.[2]

Conceding the force of this contention, it should be borne in mind, first, that in the present limited range of international law, if international tribunals were to be confined to strictly legal grounds of decision, their usefulness would be greatly restricted; second, that the value of compromise as a principle of adjustment in cases on the border line between law and policy, so to speak, or involving issues not entirely legal, must not be lost sight of — unless, indeed, we are to assume that a decision by compromise is worse than no decision at all; and third, that the development of international law is not dependent upon judicial action alone, or even predominantly, for more and more the nations are resorting to the legislative function as a means of building up their legal system. As a matter of fact an international court, in so far as it functions at all, must necessarily serve both the important ends referred to above; and because both have seemed transcendently desirable, the idea of a World Court as the embodiment of justice between nations has for centuries been the dream of publicists and international jurists. The ideal schemes of world organization which have appeared from time to time have provided for some sort of an international judicial organization — a council, as in the " Grand Design " of Henry IV of France; an international parliament charged with judicial functions, as devised by Penn in his " Essay Towards the Present and Future Peace of Europe "; a senate, as proposed by Abbé Saint-Pierre in his famous early eighteenth century project of perpetual peace; or a council of judicature, as envisaged by Bentham in his "Plea for an Universal and Perpetual Peace." [3]

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[2] See on this subject Dr. Hans Wehberg, *The Problem of an International Court of Justice* (1918), Ch. II.

II. WORLD COURT PROJECTS

The project of a World Court has received marked stimulus from the establishment and prestige of the Supreme Court of the United States. The close analogy of the Supreme Court to a true international court of justice, as regards both its position in the American system of government and in the character of the interstate disputes with which it deals, has strengthened the belief that it was not only possible but practicable to organize a tribunal to perform for the nations, within limits, the functions which the United States Supreme Court performs for the states of the American Union.[4] This analogy must not be pressed too far, however. The Supreme Court, as Chief Justice Hughes has pointed out,[5] is the agency of a national government, and sustained by the sentiment which attaches to a national institution. An international court, before it can assume a comparable position in international life, must inspire the requisite measure of confidence on the part of the nations resulting from judicial work long sustained and of high quality.

The project appears to have been first taken up in a public way at the first meeting of the General Peace Convention, at London, in 1843. From that time on it repeatedly engaged the attention of private organizations, and numerous plans for the establishment of an international tribunal, most of them contemplating a court of arbitration rather than a strict court of justice, were elaborated. This growing sense of the need of such an institution first bore fruit, as has been seen, in the establishment of the Permanent Court of Arbitration at The Hague, in 1899. This notable achievement did not, however, realize the ideal of a true court of justice; rather it stressed the need of such an institution. The Second Hague Conference of 1907, while elaborating and improving the arbitral convention of the First Conference, worked out the details of two world court projects; and while neither of the proposed tribunals ever was established, the plans developed and the debates on them in the conference, constitute an epoch in the history of international judicial settlement, and paved the way for the present World Court.

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[3] Some of these schemes are referred to by A. S. de Bustamante, *The World Court* (1925), Chs. II and III; by J. W. Garner, *Recent Developments in International Law* (1925), Lecture XIII; and by Wehberg, *op. cit.*, Ch. VII. Ladd in his *Essay on a Congress of Nations* provided for a "Court of Nations for the peaceful adjudication of cases of international difficulty which should be referred to it, by the mutual consent of two or more nations."

[4] On this general subject see T. W. Balch, *A World Court in the Light of the United States Supreme Court* (1918); Charles Warren, *The Supreme Court and Sovereign States* (1924); J. B. Scott, *Sovereign States and Suits before Arbitral Tribunals and Courts of Justice* (1925); H. A. Smith, *The American Supreme Court as an International Tribunal* (1920).

[5] Address on "The Future of International Law" at the Long Beach Conference on the Foreign Relations of the United States, in 1917, Vol. VII *Proc. Acad. of Polit. Sci.*, Part I, 8–9.

Proposed International Prize Court

The first project was for an International Prize Court, and was embodied in a convention which was approved by the conference.[6] In brief, this court was to be one of fifteen judges, the eight Great Powers to have their appointees on the bench permanently, while the lesser powers were to appoint members according to a scheme of rotation which would take account of their relative rank in determining the frequency with which their appointees would sit. The Court was to hear appeals from the national prize courts in specified classes of case, and both neutral states and neutral individuals, as well as citizens of belligerent enemy powers, would enjoy the right of appeal. The court was to base its decisions upon international law as laid down by treaty, or the common law of nations if no conventional law existed; and if no recognized legal rules were applicable, the court should decide in accordance with equity and justice.

This convention was signed by thirty-three states, a few making reservations as to the method of choosing the judges. Its subsequent history is instructive as bearing upon the general problem of the international judicial function. It was to administer international law primarily, and resort to equitable rules in cases not governed by existing law. But the body of prize law is inadequate, and on important points unsettled. Much of it is common only in name — that is to say, in many respects there is lack of general agreement as to what the law is, with divergent holdings on important points by national prize courts. It was felt by Great Britain, in particular, that it would be hazardous to arm an international prize court with power to administer an unsettled system of prize law. The opposition of Great Britain, in view of her predominant naval power, was fatal to the scheme. To pave the way for its ultimate establishment, however, an International Naval Conference was held at London, in 1908–1909, to codify the law of prize, resulting in a body of rules collectively known as the Declaration of London; but this, in turn, while of recognized authority, also failed of adoption.

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[6] Prize courts are national tribunals set up by belligerent states for the purpose of deciding upon the validity of captures made in naval warfare. They are supposed to administer international law. On this project see J. B. Scott, *The Hague Peace Conferences* (1909), Vol. I, Ch. X.

This International Prize Court project of the Second Hague Conference, despite its failure, is a landmark in the history of international judicial organization.[7] It contemplated a court in the strictest sense, with definite powers and a prescribed jurisdiction. The reason for its failure to secure adoption is suggestive of the handicap under which any international court of justice must at present function — namely, the relatively narrow scope of international law, and within this restricted field a diversity of national interpretations which must be reconciled either by international agreement or by the slow growth of custom before international courts can have a satisfactory body of law to administer.

Proposed Hague Court of Arbitral Justice

The other undertaking of the Second Hague Conference, also abortive, was the drafting of a convention providing for a Court of Arbitral Justice. This court project was peculiarly American. In his oft-quoted instructions to the delegates of the United States to the Second Conference, the American Secretary of State, Mr. Root, directed them to bring about " a development of the Hague Tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility."[8] While there was a Russian project before the conference, the American plan was the basis of discussion. The conference went so far as to formulate a convention providing for the proposed court, complete except with respect to the number and selection of the judges. It followed rather closely the main lines of the Prize Court Convention, and in turn it supplied the general plan on which the statute of the present Permanent Court of International Justice was drafted.

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[7] In some respects it was the most remarkable achievement of the conference. See Garner, *op. cit.*, 675 and note. Mr. Elihu Root has pronounced it " the furthest point to which the movement for the judicial settlement of international disputes has gone." *Addresses on International Subjects* (1916), 70.

[8] Instructions to the American Delegates to the Hague Conferences, by Hon. John Hay and Hon. Elihu Root, Secretaries of State, *W. P. F. P.*, Vol. III, No. 4.

But despite the utmost efforts of the more important members of the conference, the obstacle of the personnel of the proposed bench could not be overcome. Standing upon the principle of state equality, the lesser states claimed equal representation on the bench and the Great Powers refused to concede it. Theoretically, of course, the debate on this question lost sight of the fact that the court was to be purely judicial and impartially international, so that no state would be " represented " on the bench by its appointee. But there remained the fear on the part of the small states lest the Great Powers, theory aside, would exert a dominant influence in the court if given a disproportionate number of the judges. Obviously a bench composed of appointees from all the states was out of the question, and as no compromise such as that agreed upon in connection with the Prize Court could be worked out, the conference was obliged to confess failure, going on record as recommending the adoption of the plan when an acceptable method of selecting the judges could be devised.[9] The same problem was encountered in framing the present World Court Statute, and was solved by utilizing the Council and Assembly of the League as electoral bodies, as later explained.[10]

Central American Court of Justice

The distinction of having created the first true International Court of Justice — albeit one of limited scope — is enjoyed by the five Republics of Central America. The Central American Court of Justice was set up at the Central American Peace Conference of 1907. It consisted of one judge from each state, and to it the parties to the convention agreed to submit " all controversies or questions which may arise among them, of whatever nature and no matter what their origin may be," not settled by diplomacy. It was established for a ten-year period, at the termination of which it went out of existence, after having rendered a decision in which the interests of Nicaragua, Costa Rica, and Salvador, and certain treaty rights claimed by the United States, were involved.[11] The general plan was revived at the

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[9] For interesting comment on this project in the Conference see T. J. Lawrence, *International Problems and Hague Conferences* (1908), 73; also W. I. Hull, *The Two Hague Conferences* (1908), 410 ff.; Scott, *op. cit.*, Ch. IX. For text of the plan see James Brown Scott, *The Project Relative to a Permanent Court of International Justice* (1920), 177 ff.

[10] The text of this Convention is printed as Appendix B in Manley O. Hudson, *The Permanent Court of International Justice* (1925).

[11] For the history of this case, which was a regrettable incident in the Central American policy of the United States, see *W. P. F. P.*, Vol. IX, 546 ff.; Latané, *American Foreign Policy* (1927), 552 ff. On this Central American

1923 Conference on Central American Affairs at Washington, but the scheme there adopted was patterned after the Hague Arbitration Court rather than the Permanent Court of International Justice, contemplating a panel of thirty jurists made up by the five Republics, from which arbitrators will be selected by the parties to a dispute. Its jurisdiction embraces all controversies or questions not otherwise peaceably adjusted, save those affecting sovereignty and independence.

The brief review, in this and the preceding chapters, of the nature and development of the various forms of pacific procedure in the settlement of international disputes, brings the record down to the World War. The enormous development along the same lines under the peace treaties and later international agreements, whereby arbitration and conciliation have been carried to a point hardly conceived of in the pre-war diplomacy, and the Permanent Court of International Justice established, will be traced in Part VIII of this volume.

Arbitration in the Pre-War Period

Looking back upon the pre-war period, it is apparent that while much mere lip service had been paid to arbitration, it had gained substantial recognition in a variety of forms; but it is equally clear that the spirit of nationalism had defeated all attempts to make it an effective substitute for war. The principle of compulsory arbitration had won meager victories here and there, to be sure; but generally speaking the stronger nations, those in aggressive competition and therefore most likely to generate dangerous disputes, had refused to yield their right to resort to force except when it suited their assumed interests at the moment.[12] Had this situation been more generally realized before the war; had the immediate results of the peace movement been less superficially impressive; had the world understood that, despite appearances, no effective methods of dealing with grave international disputes had been devised, the Great War would have seemed less inexplicable, less catastrophic.

There is force in the remark of a recent writer,[13] that one observes

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Court of Justice see A. S. de Bustamante, *The World Court* (1925), Ch. V. For text of the convention establishing it see F. C. Hicks, *The New World Order* (1920), 399 ff.

[12] See J. B. Moore, *International Law and Some Current Illusions* (1924), Ch. III, for a survey of international arbitration in 1914; also Denys P. Myers, "Arbitration Engagements Now Existing in Treaties, Treaty Provisions and National Constitutions," *W. P. F. P.*, Vol. V, No. 5, Part III (1915).

[13] J. L. Brierly, *The Law of Nations* (1928), 189.

a prevailing tendency to base exaggerated hopes upon the development of the judicial side of international institutions, which often results from a misunderstanding of the function of law in general. Law alone cannot meet crises, nor preserve the peace, however well developed international judicial machinery may be. To think of the present World Court, for example, as a complete guarantee of peace if only all nations come into it, is to invite bitter disillusionment when situations arise with which it is powerless to deal. Courts alone do not maintain order within the state. In so far as domestic peace depends upon law, they are a powerful factor; but laws derive their validity from the whole complex of social forces behind them, of which the judicial function of interpreting and applying them is but a single element, albeit an important one. Law and politics are inextricably and often perilously mixed in the relations of states as well as within the state.

On the other hand, the permanent value of the pre-war peace campaign should not be minimized. It had been educational and instructive; the nations had begun to think, and statesmen to talk, in terms of peace. True, the movement was not strong enough to cope with the great emergency of 1914; it lacked organization, was too feebly supported by public opinion; so that it was temporarily overmatched by the disruptive forces of international society. But its essential strength, and its inherent possibilities, have since been demonstrated; apparently all it needed was a supreme demonstration of its necessity such as the Great War afforded.

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Part VII

THE PROBLEM OF WAR

CHAPTER XIX

WAR IN INTERNATIONAL RELATIONS

I. War as a Measure of Self-Help

Preservation of the public peace is one of the master interests in international government — as indeed of any government. In the domestic sphere life has on the whole become so orderly, and the authority of government so firmly established, that serious disturbances of the public peace are normally infrequent and sporadic. In the more backward countries insurrectionary movements have to be dealt with from time to time, and everywhere individual lawlessness still presents a problem for the law-enforcing agencies of government; but factional private wars are virtually a thing of the past, and generally speaking the private citizen in all the advanced nations of the world is protected against disturbances of the public peace.

International government has won no such substantial victory. From time to time international war ravages the most civilized nations of the world. While the citizen is protected by his government against violence at the hands of his fellow citizens, he is obliged to hold himself in readiness to respond to the imperious summons of the same government to engage in the wholesale slaughter of the citizens of a neighboring and perhaps hitherto friendly country. In this enterprise he hazards life and limb, often with no intelligent idea of the cause for which he is fighting, and with no option but to bear his part in the slaughter even if, understanding the issues involved, he condemns the warlike policy of his government.

Within the state, the process of eliminating the habitual resort to violence as a means of attaining justice or security has been that of substituting public law for private force, and of arming the law with the collective power of the community to guarantee its enforcement. This has appeared to be the obvious and inevitable course to pursue. Violence has no quality of justice; it is essentially irrational, lending itself as readily to the wrong as to the right. Courts may not always succeed in administering exact justice, to be sure, but making due allowance for the human factor, their processes rationally and consistently tend to secure the prevalence of right. Again, this process of substituting the method of the law for that of force as between man and man has involved, not merely the establishment of the machinery of the law, but the cultivation of the individual disposition to respect, resort to, and abide by, the law. Thus the problem has been in part political in the strict sense — that is, the development of a system of jurisprudence regulating human relationships, and in part psychological and social — the cultivation of a will to obey the law and respect its agencies.

Failure of Nations to Keep the International Peace

In the international sphere the practical problem is similar, but more complicated. Disputes are bound to arise between nations, as between individuals. Statesmen cannot see eye to eye when the interests of their respective countries appear to be in conflict. What seem to be unjust or aggressive policies will be pursued by states, to the real or fancied injury of other states. Differences of view, of motive, of objective, are implicit in the contacts of nations; and their resultant policies, inadequately checked and balanced by a sense of responsibility for the peace and good will of the world, may inevitably diverge — or rather converge — to the point of a quarrel. The question is, then, how shall these disputes be settled, granted their inevitability? As with individuals, two ways are open, and only two: a resort to the arbitrament of war, or the provision of agencies for peaceful adjustment applicable to the character of the particular dispute. The analogy between quarreling individuals and disputing nations, as regards the alternative processes of adjustment, is indisputable. Says Bernard Shaw: "There is only one alternative to government by police, and that is government by massacre."[1]

But nations, in spite of the substantial triumph of law over force within their own jurisdictions, have hitherto reserved and exercised the right to resort to war to settle their quarrels, as an inalienable attribute of sovereignty. They have been guilty of a triple failure of the most tragic import. Not only has international government been unequal to the task of developing a code of law sufficiently comprehensive to regulate the essentials of international life; it has also failed to set up adequate agencies for the enforcement of such law as it has developed; and worst of all, it has made scant headway in cultivating a genuine disposition to think of international relations in terms of law, and of justice under law. Still the fighting instinct, which it has been the task of government to curb in the individual, is widely thought of as fundamental and untamable in the group; and war, as the arbiter between nations, is still too commonly acclaimed as a divine and inalienable right of nations. Lord Robert Cecil has characterized this traditional point of view as "the jungle theory of international relations." Thus appears the interesting paradox that men in groups resort to methods of settling disputes which rational men within the group have completely repudiated. To discuss this paradox at length would be to deal with the whole problem of war — an undertaking beyond the scope of this study.

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[1] Introduction to L. S. Woolf, *International Government* (1916), p. xv.

War Not Prohibited by International Law

It should be clearly understood, at the outset, that war is not illegal under existing international law — is not thereby prohibited or penalized. Reparations and indemnities are exacted by the victors in war as a consequence of defeat, and as a matter of policy, not in pursuance of any legal right in the victors to money or other damages upon the theory that the resort to war was a legal wrong. War is not a crime comparable with a breach of the peace under municipal law; it is rather a legitimate resort to measures of self-help, punishable, in fact but not in law, only in the event of failure.

The Geneva Protocol [2] went so far as to assert that a war of aggression constitutes a violation of the solidarity of nations and an international crime; but this Protocol was not adopted, and thus stands merely as an expression of the sentiment of the League Assembly by which it was drafted and approved. It is significant, also, of the new point of view with reference to war that the language of the Protocol was reiterated in a resolution adopted by the Eighth Assembly of the League (1927), wherein the Assembly declared that "being convinced that a war of aggression can never serve as a means of settling international disputes and is, in consequence, an international crime, . . . all wars of aggression are, and always shall be, prohibited." [3] Again, under the Kellogg Pact [4] the parties condemn war and renounce it as an instrument of national policy. Precisely what this means, in point of law, may be debatable, but the better view seems to be that, strictly speaking, the Pact does not prohibit or penalize war, as a matter of law, but rather embodies a condemna-

[2] See below, Chs. XXX and XXXI.

[3] *Monthly Summary*, Oct., 1927, 307.

[4] See Ch. XXXII, Sub. IV.

tion of war as a matter of policy; so that a violation of the Pact by resort to war would involve no penalties which the victors could not impose under the general law of nations.

Following the Great War there was much political discussion of the war guilt of the Kaiser, and loud demands for his punishment as a war criminal. However useful this agitation may have been for campaign purposes, it had scant legal justification. Again under certain provisions of the Peace Treaty several German officers were tried and convicted of violations of the rules of war, but that was a different matter.[5] War is not technically unlawful, but it may be prosecuted unlawfully, because international law undertakes to regulate the conduct of war.

It may be argued, on the other hand, that war is not lawful — that is, that it is neither lawful nor unlawful, but merely a state of things, like a physical event, to which the law is indifferent.[6] It is true that " international law did not institute war, which it found already existing, but regulates it with a view to its greater humanity " ; [7] but the fact remains that international law does not affirmatively declare any war illegal. It may be prosecuted by illegal methods, but the inauguration of a state of war, if done in conformity to the rules of international law whereby war in the legal sense must be instituted, is not in itself illegal. The phrase, " Outlawry of War," which has gained currency of late, is open to criticism in so far as it implies the assumption that international law affirmatively recognizes war as legal; it is an apt expression if used to signify that international law should positively condemn aggressive war as illegal.

The Moral Aspect of War

This point has been stressed because of the prevalent idea that war is an unlawful breach of the international peace. In the material sense it is a breach of the peace of nations; from the military point of view it is precisely that; but international law has hitherto regarded the fact of war with indifference, deeming it a matter of national policy, an appropriate resort to self-help in proper cases. This legal theory of war as an institution to be regulated rather than an abnormal and prohibited status for which the aggressively responsible nation should be punished, is repugnant to enlightened modern sentiment. In the first place, it falls far short of realization in practice. War is an act of self-help which in fact never has been and never can be fully regulated by law; it " can never be grasped by the law in its totality, and consequently as a whole stands outside the legal order."[8] By this is not meant, of course, that international law cannot formally cover the whole range of warlike operations and undertake to regulate them, but rather that war is essentially an abnormal status, really a confession that the relations between the states in conflict are for the time being unregulated by law; and further, that the law of war, however completely elaborated and fortified, will inevitably break down when put to the test.

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[5] R. L. Buell, *Introduction to the Study of International Relations* (Rev. Ed., 1929), 591–593.

[6] Quincy Wright, " Changes in the Conception of War," 18 *A. J.*, 755 (1924). The same writer discusses " The Outlawry of War," *Ibid.*, Vol. 19, 76 ff.

[7] *Ibid.*, Vol. 18, 757, quoting Westlake.

In the second place, the legal theory of war is repugnant to the moral sense. It has been said that " the legality of war constitutes the greatest anomaly that now anywhere exists in morals."[9] This should not necessarily be taken as an indictment of the statesmanship that accepts war as the traditional means of advancing the national interest; it is rather a commentary on war from the standpoint of Christian civilization, and in the light of what Lord Haldane called the higher nationality — that fine, instinctive sense of chivalry and good will, right and justice, which should characterize the intercourse of nations. But the important point for this discussion is that the general law of nations does not prohibit or penalize war, but regulates its conduct; indeed, war has been brought more completely under the letter of international law than have the peaceful relations of states.

II. General Principles of International Warfare

It is beyond the scope of this work to review the law of war in detail; some general principles may be noted by way of illustrating the nature of its rules.[10] International war is an armed conflict between states; it is not a relation between individuals. This distinction is fundamental, but whether it can be maintained in practice, under modern conditions of warfare, may well be doubted. When governments, as in the World War, are obliged to commandeer the services and the resources of their entire populations, both civil and military, to maintain the conflict, the theory that it is one between states, represented by governments maintaining armed forces in the field, rather than one between peoples, is greatly weakened, to say the least. This aspect of modern war is profoundly significant and suggestive.

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[8] O. Nippold, *International Law after the World War* (1923), 112.

[9] John Dewey, " Ethics and International Relations," *Foreign Affairs,* Vol. I, No. 3, 85, at p. 95.

[10] These rules have been codified to a much larger extent than has the international law of peace. They may be found in the conventions and declarations of the Hague Conferences, and in certain other documents having more or less the force of general international law. For this material the student is referred to the works on International Law.

War is often spoken of as a right incident to sovereignty; it is rather to be deemed an exercise of political power, an act of national policy. If it were a right, in the legal sense, international law would undertake to prescribe the conditions under which it might be resorted to in order to justify it juridically, and thus, by implication at least, to define unrighteous wars. In fact international law does nothing of the sort; it never has attempted to characterize the causes of war as rightful or wrongful, just or unjust. With the causes of war it has no concern whatever. It prescribes no grounds of justification or condemnation of war, but accepting it as a fact, merely undertakes to regulate its conduct. Thus questions as to the justice of war, or of a particular war, while of the most vital significance, " belong to the domain of international ethics or morality rather than to that of international law." [11]

Fundamental Rules of War

Peace is the normal relation between states, war an abnormal condition which profoundly affects not only the belligerent states and their nationals, but neutral governments and individuals as well. By the outbreak of war the states themselves, and even their nationals, become legal enemies, while new duties and responsibilities are thereby imposed upon all non-belligerent states and their nationals. In view of the far-reaching legal effects of war, international law undertakes to prescribe the conditions under which war in the legal sense may be held to begin; it also defines the consequences flowing from war — its effect upon diplomatic intercourse between the belligerent states, and upon the treaties existing between them;

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[11] A. S. Hershey, *Essentials of International Public Law and Organization* (Rev. Ed., 1927), 546 ff., has suggestive enumerations of the fundamental causes of war. See also James Bryce, Presidential Address delivered to the British Academy (1916), Ch. VI in his *Essays and Addresses in War Time* (1918); Philip Kerr and Lionel Curtis, *The Prevention of War,* Lectures I and II by Kerr (1923), and F. F. Urquhart, " The Causes of Modern Wars," Part II in *International Relations* by A. J. Grant and others (1916). Of course aggressive war is condemned, expressly or by implication, by the Covenant of the League of Nations and by such peace agreements as the Locarno and Kellogg Pacts.

and the status of the nationals of one belligerent, and of their property, in the territory of the other.

The law of war makes a sharp distinction between non-combatant and combatant individuals — that is, those who are entitled to be treated, in the conduct of warlike operations, as part of the civilian population of the state, and those constituting its armed forces and therefore subject to all the severities of war. It regulates in detail the treatment of prisoners of war, and of the sick and wounded; it prohibits certain methods and agencies of warfare; and it prescribes the rights and responsibilities arising when the military forces of one belligerent occupy the territory of another. Warfare on the sea is regulated by a special set of rules, which deal with such matters as the right of a belligerent to capture the ships and cargoes of his enemy on the high seas, the care of the sick and wounded in maritime war, the use of submarine mines, and bombardments by naval forces.

III. NEUTRALITY IN MODERN WAR

International law not only undertakes to regulate the conduct of war as to the belligerents; it also deals with the relations between the belligerent states and non-belligerent or neutral states, in important respects. This part of international law is called the law of neutrality. Neutrality is defined as the condition of those states which, in time of war, take no part in the contest, but continue pacific intercourse with the belligerents. From the neutral standpoint, then, it is a continuation of a previously existing state of peace; but the position of the neutral is by no means so favorable as this statement would imply, because his relations with the belligerents are radically changed by certain rules which at once confer rights and impose liabilities which do not exist in time of peace.

The law of neutrality falls into two main divisions: (1) Rules dealing with reciprocal rights and obligations as between belligerent states and neutral states, based upon the principle that the neutral is bound to maintain impartiality as between the belligerents, and in general entire abstinence from the conflict, and the belligerents to respect the obligations thus imposed upon the neutrals; and (2) rules recognizing certain rights and obligations as between the belligerent states and neutral individuals.[12] The law of neutrality seriously affects the normal commerce of individuals on the high seas. Here two interests are invariably found to be in sharp conflict; that of the neutral to trade safely and with the least possible molestation not only with other neutrals but with both belligerents; and that of each belligerent to hamper as much as possible sea-borne commerce with his enemy. This conflict has an interesting history; nor has it ended yet, still continuing in the debate over freedom of the seas. It involves three main subjects; (1) The right to capture innocent private property on the high seas; (2) the right of naval blockade; (3) the right to capture and confiscate what is known as contraband of war en route to or for the use of the enemy — that is, goods susceptible of hostile use by the enemy.

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[12] States protect their neutrality by enacting what are commonly called Foreign Enlistment Acts. They are bound to see to it that their statute law arms their governments with power sufficient to enable them to fulfill their neutral obligations. If they fail to do so they are liable to the injured belliger-

Neutrality under Modern Conditions

The development of the law of neutrality, which as it exists today is of comparatively recent origin, is of interest to students of international government from two or three points of view. In the first place, it illustrates the rôle played by commerce in international relations. On the whole the influence of international traders has been exerted in behalf of exempting commerce as much as possible from the restrictions imposed by a state of war. Generally speaking, it has been to the advantage of commerce to circumscribe the theatre of war by enlarging the sphere of neutrality.

In the second place, the development of the principle of neutrality has heretofore been on the whole in the nature of a peace movement. Unless a party to a quarrel, or bound by treaty to become one, a state is legally obliged to remain neutral; and thus the law of neutrality, if observed, assures the continuance of peaceful relations between belligerents and neutrals. Unfortunately, however, modern conditions have made it increasingly difficult for neutrals to remain such. During the World War President Wilson remarked: " War now has such a scale that the position of the neutral sooner or later becomes intolerable." By this he meant that nations have become so interdependent, their relations so intimate and complex, and their interests so world-wide and so delicately adjusted, that they are almost irresistibly drawn into the conflict in self-defense. In striking at each other, belligerents unavoidably disrupt the delicate structure of commerce, credit, and exchange upon which the well-being of modern nations depends, thus inflicting injury upon all trading nations and

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ent, as was Great Britain to the United States in the matter of the Alabama Claims.

making neutrality burdensome if not impossible. Such was the experience of neutral countries in the World War, which put the law of neutrality to a very severe test. Powerful belligerents pressed their measures to the very limit of legality, and beyond, with scant regard for the rights of neutrals unable to protect their neutrality.

Theory of Neutrality Questioned

In the third place, the whole theory of neutrality is being seriously questioned. It presupposes an indifference to the issues involved in a given war which enlightened non-belligerent nations do not and cannot feel. President Wilson's appeal to the American people, early in the World War, to remain neutral in thought as well as in act, fell largely upon deaf ears, though well intended. The old conception of war as a localized struggle between armed bands of professional fighters — a struggle in no sense involving material interests or political principles of general international concern — has little in common with the modern conception of war as an evidence of international political bankruptcy, and as an international economic disaster. The progress of international government, the rise of new theories of international life, the creation of necessary institutions of international control, and the economic interdependence of nations, have so far weakened the essential principle of neutrality as to well-nigh render it obsolete. Its death-knell was really sounded in the Covenant of the League of Nations, which declares:

> Any war or threat of war, whether immediately affecting any of the members of the League or not, is hereby declared a matter of concern to the whole League.

Neutrality is based upon the principle of legal indifference to war; the new note in international relations is that of collective legal responsibility for peace. These two concepts are irreconcilable; and because the latter alone promises ultimate freedom from the scourge of war, the law of neutrality bids fair to undergo profound modifications, to say the least, in the future code of international law.[13]

Such in the briefest outline are the main provisions of international law regulating the conduct of war. For the most part they are rules of customary origin, even the Hague conventions being mainly codifications of preëxisting rules. New developments in military art, like the use of aircraft and submarines, electrically discharged submarine bombs, and the like, have necessitated some new regulations, and certain modifications of the older rules.

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[13] For a valuable discussion of the future of neutrality by Professor Quincy Wright, with illustrative documents, see *Int. Con.* for Sept., 1928, No. 242.

IV. Weakness of the International Law of War

It must be confessed that the laws of war are the least effective part of the international code. In civilized society the resort to force, of which international war is the most colossal exhibition, is fundamentally inconsistent with the restraints of law. Indeed, the very existence of a state of war between two nations raises the presumption that the processes of adjusting international quarrels in forms of law have been repudiated by one or both of them.

War is generally characterized by violations of the rules by which it is supposed to be regulated. The World War was an impressive illustration of this. It began with an egregious breach by one of the belligerents — and admitted by it to be such — of the fundamental right of a neutral nation to enjoy complete immunity from all warlike operations within its borders; and throughout the conflict scant respect was paid to the legal rights of neutrals. In the actual conduct of military operations established rules were either pressed to the limit of severity or frankly disregarded, under the plea of military necessity or that of retaliation for the same or similar breaches of law on the other side.[14]

In fact, so ineffective is the sanction of the international law of war deemed by some, and so general its violation, that doubts are occasionally expressed as to the advisability of undertaking at all to regulate the conduct of war by law.[15] A recent authority entitles that part of his text dealing with this branch of international law " The so-called Law of War," thus implying doubt as to whether regulative rules flouted so generally and with such impunity are entitled to be called law at all. Without doubt the grave inability of international government to command respect for the law of war has brought the whole code of international law more or less into popular disrepute. So profound was the impression made by the severe or illegal practices of the World War that even well-informed observers declared that the whole system of international government had fallen into ruins, and must be rebuilt from its foundations at the close of the war.

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[14] An even more tragic exhibition of the ineffectiveness of the laws of war is afforded by the Balkan wars of 1912–1913. See *Report of the International Commission to Inquire into the Causes and Conduct of the Balkan Wars* (Carnegie Endowment, 1914). See also *Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities Conference of Paris* (Carnegie Endowment, 1919).

[15] For a contrary view see J. W. Garner, *Recent Developments in International Law* (1925), 806–807.

Enforcement of the Law of War

Two or three factors are mainly responsible for the inability of states to bring war under legal regulation. One is the fact, already alluded to, that the resort to war by quarrelling nations is analogous to taking the law into their own hands. The spirit of war is antagonistic to the conception of legality; the maxim *inter arma leges silent* is a natural corollary of this method of settling international disputes. Again, two of the fundamental principles of warfare are more or less antagonistic in practice. One is the principle of humanity, which dictates that certain practices are repugnant to the sense of humanity, fair play, or honor. It is under this principle that certain methods and agencies of warfare are prohibited. The other is the principle of military necessity, which legally justifies measures deemed necessary, under the existing circumstances, from a military point of view. Obviously it is not difficult, in the exigencies of a bitter conflict, to stretch the principle of military necessity to cover acts legally forbidden on grounds of humanity.

Finally, there is no effective way of enforcing compliance with the laws of war during the course of the conflict. The belligerents may each hold the other in some restraint by the threat of retaliation or reprisals, in case the law is violated to their prejudice, but such measures may simply aggravate the evil instead of abating it. As to neutrals, it is difficult if not impossible for them to determine, during the progress of the war, and with each side loudly denying its guilt or claiming to justify its conduct under the plea of retaliation, where guilt lies. And even if guilt were fixed, neutral states are under no legal obligation to play the part of prosecutor and judge; indeed, it would be placing a heavy burden upon neutrals, unless they were to act collectively, to oblige them to embark upon war themselves to restrain or punish a transgressor, unless their own interests were jeopardized. Moreover in a war like the recent World War, involving most of the Great Powers, the lesser states find themselves powerless to punish violations of law, however prejudicial to them.

Rules of Warfare Generally Observed

It should be stated, however, that as a matter of fact the laws of war as a whole are less egregiously violated than is popularly supposed. Rules based upon the fundamental dictates of humanity are pretty generally observed, it is safe to say. Such atrocities as characterized the wars of the seventeenth century, for example — and even some later wars, such as putting the inhabitants of captured places to the sword, refusing quarter to enemy soldiers voluntarily throwing down their arms, and killing prisoners of war, no longer occur. Expressly forbidden by universally accepted rules of war, no belligerent would dare risk the condemnation of the civilized world by perpetrating them. Thus the laws of war, embodying as they do the dictates of a more humane and enlightened age, have had a restraining influence upon war; and it would be a step backward to forego all attempts to regulate the conduct of war by law — unless, indeed, the position were taken that the quickest way to end war is to throw off all restraints upon its prosecution, thus making it so horrible and devastating as to deter civilized peoples from resorting to it.

V. WAR AS AN ARBITER BETWEEN NATIONS

So much for the attempt to regulate war by law. The unfortunate fact remains that war persists, still recognized by the general law of nations as a permissible mode of dealing with international disputes.[16] From the beginnings of authentic history it has characterized intergroup life; it is deeply rooted in the traditions of the human race, and makes powerful appeal to the imagination and instincts of mankind. What characterizes the present era, however, is that war has fallen under very general condemnation, both from the broadly social point of view, and as an instrument of national policy. It is no longer generally defended, either as a political expedient or as inherently beneficent. The arguments formerly advanced in its defense have lost much of their former potency — as for example, that it is natural, instinctive, inevitable, because man is a fighting animal; that it is one manifestation of the evolutionary law of struggle and the survival of the fittest, the nation fittest to survive being the one preëminent in war; or that it is necessary as a national tonic, to counteract the enervating influences of the pursuits of peace, and to nourish the highest type of physical and moral valor.[17]

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[16] This statement, sound as a general proposition, should perhaps be qualified by reference to the numerous recent treaties discussed in Ch. XXXII, by which certain states have agreed not to go to war with certain other states, and to the Kellogg Pact.

[17] See on this line of argument James Bryce, *op. cit.*, Ch. IV, on "War and Human Progress"; also H. R. Marshall, *War and the Ideal of Peace* (1915), Ch. IV.

Thus war has been declared against war, and the progress of the campaign forms one of the most interesting topics in the whole range of international relations. Extraordinary impetus was given to the peace movement by the World War, which impressively demonstrated half a dozen weighty reasons why war is incompatible with modern civilization. But the beginning of this campaign antedates the Great War, being evidenced by certain developments of the pre-war period looking towards a more secure basis for international peace.

Arbitration as a Substitute for War

Perhaps the most significant of these developments was the increasing stress laid upon the principle of arbitration as a substitute for war, already discussed in Part VI. The net result of this movement, while a material advance upon earlier practice, was nevertheless disappointing. The tenacity with which nations clung to the right of ultimate resort to war, unconditioned by any obligation assumed prior to the occasion for war to resort to peaceful means of adjustment, was a striking evidence both of the vitality and power of the war instinct, and of the essential anarchy of international relations in crises. Arbitration [18] goes to the crux of the war problem, which is the substitution for force of some alternative method of adjusting international differences; but voluntary arbitration cannot be a dependable substitute for war. The obligation to arbitrate must exist at the moment the quarrel arises, else the very existence of the quarrel may defeat arbitration.

It has already appeared that slight recognition had been gained, before the World War, for the principle of compulsory or obligatory arbitration. It came in for consideration at the First Hague Conference, in connection with a proposal of Russia relating to pecuniary claims and certain disputes concerning the interpretation or application of treaties, which failed of adoption; and at the Second Hague Conference a project advanced by the United States for the obligatory arbitration of differences of a legal nature, and primarily those relating to the interpretation of treaties, shared a like fate.

Thus, to repeat further, up to the organization of the League of Nations arbitration, while embodied in many treaties, and dignified by the creation of the Hague Permanent Court of Arbitration, had not advanced far beyond the voluntary state. True, obligatory arbitration had won some recognition; but no first-class nation had as yet committed itself by treaty to the principle in any substantial way, nor had the Great Powers as such agreed in advance to arbitrate any specific class of cases.[19] But the assurance of permanent international peace cannot be predicated upon any partial recognition even of compulsory arbitration. So long as any class of disputes whatever may be taken as the occasion for armed force, permanent peace can never be assured. Hence the ultimate goal of the development of arbitration — taking arbitration to include any and all peaceful means of settlement between nations, is universal obligatory arbitration; and prior to the adoption of the Covenant of the League of Nations no important nation had ever assumed so drastic a commitment.

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[18] Taken in this connection to include judicial settlement and conciliation.

The Campaign Against War

The World War afforded tragic evidence of the futility of the movement, outlined in the foregoing pages, to eliminate war from international relations. No substantial progress had been made towards the substitution of obligatory arbitration for the arbitrament of war, nor had the provocation of competitive armaments been mitigated by international agreement. With the conclusion of peace the campaign against war entered upon a new phase. First, as will be pointed out later, the peace treaty severely limited the armaments of the Central Powers, before the war the dominant military nations of Europe. Second, the Covenant of the League of Nations definitely committed the members of the League to measures looking towards the reduction of armaments, and set up permanent machinery to promote them. Third, the war itself impressed the nations of the world with an overwhelming conviction that modern war is incompatible with modern civilization, and must ultimately be abolished. This conviction was based upon several propositions pretty effectively demonstrated by the war, which it will be worth while to summarize as the background of the League's anti-war activities.

Increasing Range and Destructiveness of War

First, as already indicated, the inevitable tendency of modern wars is to become general, thus making neutrality, at least on the part of the more important nations, difficult if not impossible. This result flows from the far-flung interests of the modern state, and the amazing complexity of modern international life. The operations of war on any large scale inevitably disrupt the normal flow of neutral commerce, shatter the exchanges of the world, and affect seriously the rights of individuals, both belligerent and neutral. Nations are so situated geographically, and so conditioned industrially, that they naturally tend to fall into groups more or less closely allied in interest; and war between members of two such groups is apt to become war between the groups — and this even without any formal political ties between the member states.

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[19] Except under the so-called Porter Plan of the Second Conference relating to contract debts.

Second, war has come to involve wholesale destruction of life and property, due to its widespread field of operations and the deadly character of its agencies. The World War sufficiently evidences the catastrophic ruin incident to modern warfare. Modern transport makes it possible to maintain in the field armies of unprecedented size, and to conduct operations over a wide area. Modern inventive genius has projected war into the air and under the seas, while chemistry has produced death-dealing agencies inconceivably terrible.[20] Thus future war bids fair to become, not merely a matter of defeating the enemy, but of annihilating him. Moreover, the financial costs of modern war, as the late conflict proved, have become so enormous as to involve both victor and vanquished in common ruin. No longer can war be made profitable.

Effect of War Upon International Commerce

Third, war inevitably disrupts the whole system of international commerce. As already stated, this tends to make war general; but even those nations not drawn into it for self-protection suffer enormously from the cutting off of their supplies of foodstuffs, and of raw material for their industries. No nation in the world is a perfectly self-contained economic unit; the great majority of them are absolutely dependent upon the foreign market for raw materials necessary to their industrial prosperity. War cuts the arteries of overseas trade, or makes it prohibitively hazardous or burdensome. Thus the tendency of nations to specialize in their productive processes — a tendency rendered highly expedient by the unequal distribution among the nations of the raw materials of industry, and entirely feasible in time of peace by reason of the development of modern transport — is incompatible with war.

Fourth, the enormous destructiveness of modern war forces nations to make elaborate defensive preparations, at ruinous cost in money and productive energy. The military and naval budgets of the leading nations, which bear witness to the cost of past wars and of preparations for future wars, are a sufficient commentary upon this method of settling international disputes; and this burden of expense, always serious, falls with especial weight upon peoples at just the times when, by reason of their war exhaustion, they are least able to bear it.

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[20] See E. K. Fradkin, "Chemical Warfare — Its Possibilities and Probabilities," *Int. Con.*, No. 248 (1929).

Effect Upon Civilian Populations

Fifth, the development of the art and science of war has resulted in the disappearance of any real distinction between combatants and non-combatants. In theory, international law distinguishes between those who constitute part of the armed forces of the belligerent — his soldiers, sailors, and others regularly enrolled in the service, and the unarmed civilian population, and accords the latter immunity from the severities of warlike operations, save as they may result incidentally. They must be protected in life and limb, and their property can be taken or destroyed only under severe restrictions. But this immunity attaches only so long as the non-combatant holds aloof from the conflict, and is lost the moment he participates in it. Now modern war involves operations so gigantic — the maintenance of such enormous fighting forces and the production of supplies of war material so vast — that the worker behind the lines is as essential to its prosecution as the soldier at the front. War nowadays involves whole populations, not, as formerly, mere groups of fighting men. Thus in practical result, there is no such thing as a non-combatant, in the old sense; and this being so, it will be difficult in the future to maintain the distinction between combatant and non-combatant. In so far as this is true, soldier and civilian alike will suffer the hazards of war.

The Growing Solidarity of Nations

Sixth, Bryce has pointed out that among the lessons of the Great War were these: (1) That the world is now one in a sense in which it never was before; (2) that everything which affects a single state necessarily affects every other; (3) that every nation is bound to take an interest in the well-being of other states and help to avoid war — the greatest of catastrophes.[21] This sense of solidarity is incomparably stronger today than ever before. Of itself — that is, as a mere sentiment — it is by no means a negligible factor in the problem of war; but the violent disruption of the numberless threads which knit modern nations together has material results so far-reaching and disastrous throughout the whole range of human life, as to put war definitely on the defensive at the bar of public opinion.

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[21] *Lectures on International Relations* (1922), 257 ff. Bryce, *Essays and Addresses in War Time,* 105 ff., summarizes the conditions of modern life which rendered the Great War "novel and terrible."

Finally, there is a growing sense of the futility of war as an instrument of national policy — its lack of any essential quality of justice. When as now, a decade after a war which well-nigh swamped the Western World, historians and statesmen are disputing about its authors, its causes, and its issues, the world may well question the utility of war, from the rational point of view, as an agency to promote justice among nations — and this quite apart from any ethical considerations whatever.

League Activities in Behalf of Peace

A very general conviction, based upon the foregoing considerations, that the nations should make an organized effort to achieve permanent peace, brought the League of Nations into existence. It fairly appears from the Covenant of the League that its primary function is to deal with the problem of war, for the " acceptance of obligations not to resort to war " holds first place in the preamble among the means therein specified of promoting international cooperation and achieving international peace and security.

The activities of the League in furtherance of this its fundamental purpose have been concerned with four distinct phases of the problem of war: (1) The traffic in arms and munitions of war; (2) the limitation of national armaments; (3) the development of the principle of conciliation and its application to specific international disputes; (4) the strengthening of League sanctions against states which resort to force instead of peaceful means for the settlement of their disputes. These activities will be discussed in Part VIII of this book. Moreover, the Treaty of Versailles bears evidence other than the Covenant of the League of an international purpose to deal with the war problem. In connection with the provisions of the treaty relating to the virtual disarmament of Germany and her Central European allies, there appears a clause binding them to observe the military, naval, and air clauses of the treaty " in order to render possible the initiation of a general limitation of the armaments of all nations," thus implying a general obligation to further the movement.

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CHAPTER XX

THE PROBLEM OF NATIONAL ARMAMENTS[1]

Because of their failure to advance judicial or other peaceful methods of settling international disputes to a position in any degree comparable with that of national systems for the maintenance of peace, the nations had prior to the War adopted the inevitable policy of self-help — inevitable because the protection of rights in international society must be sought either in collective action to guarantee peace and the prevalence of justice, or in the ultimate resort to force by the individual members of that society. There was no other alternative, assuming the inevitability of conflicting interests between nations. In the absence of collective guarantees of peace and security, the appeal to armed force was accepted as the normal arbitrament between nations; and thus the principle of self-help has dominated the foreign policy of modern nations, manifesting itself most conspicuously in the enormous size and efficiency of national armaments.

I. Competition in National Armaments

In the century between the Napoleonic wars and the World War all the important states of Europe organized armies and navies which, measured by preëxisting standards, went far beyond the requirements of mere police duty. Europe became an armed camp, and competition in armaments the fixed policy of the Great Powers. These huge armaments were justified by governments on the ground of self-defense; but obviously self-defense was not promoted by the general multiplication of army corps and warships. Increases in armaments in arithmetical ratio left the relative positions of the competing states practically unchanged; within limits this was obvious enough as a general proposition.

Again, armaments were piled up ostensibly for national protection; but protection against whom or what? Statesmen loudly proclaimed themselves innocent of aggressive designs against their neighbors, and doubtless with sincerity, if by aggression is meant a policy of sheer conquest, or even the unprovoked use of armed force. It amounted to this, then, that each of the great military powers sought to fortify itself, at enormous expense in money and productive capacity, against a policy which all the other powers flatly disclaimed. From this point of view the armaments-race of the pre-war years would appear to have been utterly irrational — an international obsession. But the situation involved other factors too subtle to be eliminated by the assurances of statesmen. To discuss them at length would lead too far afield; one of them is directly in point.

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[1] The activities of the League of Nations in dealing with the armaments problem are discussed in Ch. XXXI.

The psychological effect of vast preparations for war was inevitably to induce the fear, not of avowedly aggressive war alone, or mainly, but of international disputes in which, lacking any other established method of settlement, war would be the ultimate resort. Thus defenselessness was the unpardonable sin of governments; fear conjured up imaginary aggressions, for armies and navies may be used for offense as well as defense — indeed, it is not always easy to distinguish between the two uses. And so military and naval policy moved in a vicious circle. The greater the armaments the greater the apprehension, and apprehension in turn dictated still greater armaments. Beyond a doubt the psychological effect of this European policy of piling up armaments was to induce suspicion and fear, and so to render ultimate war more certain, more general, more devastating.

This phenomenon has never been described more clearly or authoritatively than by Viscount Grey. Writing of European policy before the War he said:

> Every country had been piling up armaments and perfecting preparations for war. The object in each case had been security. The effect had been precisely the contrary of what was intended and desired. Instead of a sense of security there had been produced a sense of fear, which was yearly increasing.[2]

And again:

> The moral is obvious; it is that great armaments lead inevitably to war. If there are armaments on one side there must be armaments on other sides. While one nation arms, other nations cannot tempt it to aggression by remaining defenseless. . . . Each measure taken by one nation is noted and leads to counter-measures by others.[3]

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[2] *Twenty-five Years* (1925), Vol. II, 279.

[3] *Ibid.*, Vol. I, 89. The reasons for disarmament are ably discussed by P. J. Noel Baker, *Disarmament* (2nd Ed. 1927), Chap. II.

II. Early European Attempts at Limitation

European statesmen were not unmindful of the dangers lurking in the armaments situation, nor, indeed, of the heavy burden of expense which it entailed. Mainly on financial grounds attempts were made from time to time throughout the century before the World War to secure some limitations of armaments by international agreement. In 1816, following the Congress of Vienna, the Czar of Russia proposed an agreement on the subject of armaments, of present interest chiefly because of the lucid statement made by Castlereagh, the British foreign minister, of the difficulties attending international agreement concerning armaments:

> It is nevertheless impossible not to perceive the complications which this question presents in the establishment of a scale of forces for so many Powers who are in such varying circumstances with regard to their relative means, their frontier, their position and their ability to arm themselves again.[4]

Nothing came of this proposal except a reduction by one-fifth in the contingents of the several powers in the army of occupation then in France.

In 1817 the United States and Great Britain entered into the historic Rush-Bagot agreement for the limitation of naval armaments on the Great Lakes. This agreement was consummated on the initiative of the United States; under it the naval force to be maintained on the Lakes was to be confined, on each side, to three ships of 100 tons burden, and armed with a single cannon, all other armed vessels to be dismantled.[5] While neither party has lived up to the strict letter of this agreement throughout the intervening century, it has afforded an impressive example of the wisdom of a policy of mutual restraint on the part of neighboring states in the matter of arms competition.[6]

At a conference on disarmament held in Paris in 1831, at which England, Austria, Russia, and Prussia were represented, a protocol was signed which contemplated the possibility of measures looking towards general disarmament.[7] A stipulation analogous in effect to the Rush-Bagot agreement was annexed to the convention known as the Peace of Paris, of 1856, whereby Russia and Turkey limited the number of vessels to be maintained on the Black Sea to ten for each power, the purpose being to neutralize that sea. This treaty was denounced, or terminated, by act of Russia in 1870.[8]

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[4] Dr. Hans Wehberg, *The Limitation of Armaments* (1921), 7.

[5] *Ibid.*, 8.

[6] For diplomatic correspondence concerning this agreement see J. B. Moore, *Digest of International Law* (1906), Vol. I, 691 ff. See also *League of Nations* (*W. P. F. P.*), Vol. IV, 394–403.

[7] Wehberg, *op. cit.*, 9.

On three different occasions between 1860 and 1870 Napoleon III of France proposed European disarmament conferences, but nothing came of the proposals. So also, throughout the latter part of the nineteenth century the question of armaments was discussed by peace congresses and raised in national parliaments, sometimes resulting in the adoption of resolutions for decreases in armaments, or a study of the question. This agitation evidenced a very general recognition of the evils of competitive armaments, and a desire to mitigate them; but its immediate result was to make it clear that the nations were not ready to deal with the problem, notwithstanding the staggering burden imposed upon them by their military establishments, and the manifest folly of their armaments competitions.

III. Results of the Hague Peace Conferences

Thus matters stood when the Czar of Russia called the First International Peace Conference at The Hague, in 1899. His formal diplomatic proposal of the conference set forth at some length the burdens imposed by war and preparations for war, and announced the primary purpose of the conference to be to seek,

> by means of international discussion, the most effectual means of insuring to all peoples the benefits of a real and durable peace, and above all, of putting an end to the progressive development of the present armaments.

Accordingly the first item on the suggested program of the conference contemplated agreement on the following point:

> An understanding stipulating the non-augmentation, for a term to be agreed upon, of the present effective armed land and sea forces, as well as the war budgets pertaining to them; preliminary study of the ways in which even a reduction of the aforesaid effectives and budgets could be realized in the future.

In the proceedings of the conference this topic took the form of a series of proposals, the substance of which was an international agreement for a term of five years for the maintenance of the existing number of troops in each country, and of the existing military budgets for the same period. These proposals were rejected, as were others which related to similar limitations for three years. The conference devoted itself mainly to the consideration of limitations upon the means of war on land and sea, practically all proposals under these heads being rejected. Thus the First Conference utterly failed to achieve its primary object — the limitation of armaments in the interests of peace. Instead, its work specifically related to war, taking the form of a series of regulations concerning the use of certain projectiles and explosives, and the adoption of two conventions relative to the conduct of war; one dealing with the laws and customs of war on land, and the other the adaptation to maritime warfare of the principles of the Geneva Convention of 1864 — the Red Cross Convention.

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[8] For the present international agreement concerning naval forces in the Black Sea, see *post*, Ch. XXXI.

The main achievement of the conference, on the specific subject for which it was primarily called, was the adoption of a resolution and a "wish," the resolution being as follows:

> The conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.
>
> The wish was "that the governments, taking into consideration the proposals made at the conference, may examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of war budgets."

But this was not the whole work of the conference. Disarmament, as has been pointed out, in the last analysis depends upon the general substitution for war of peaceful means of international adjustments. Security must be guaranteed step by step with the elimination of the traditional methods of self-defense; and one form of security would be universal obligatory arbitration. Now a necessary step towards this type of arbitration was general recognition of the principle of international arbitration, and this was achieved by the First Hague Conference, in the adoption of the Convention for the Pacific Settlement of International Disputes, which set up the so-called Hague Permanent Court of International Arbitration, already discussed.

Thus, while the First Hague Conference was disappointing to those who expected much of it, it was not entirely barren of results, even as to its main objective. The taunt was not wholly unjustified that it was a peace conference busied with discussions relating to war and having point only upon the theory that war was a universally recognized international institution. But it did envisage the problem of the limitation of armaments, brought it under international discussion, and gave some assurance that it would continue to receive the attention of governments — a not inconsiderable achievement.

Developments Between the Hague Conferences

The eight years period between the First and Second Hague Conferences was characterized by several interesting developments. One was the conclusion by the Argentine Republic and Chili, in 1902, of a convention whereby the two countries agreed to desist from acquiring the vessels of war which they had under construction, and to refrain each from increasing its naval armaments for a period of five years without a previous eighteen months notice to the other. Armaments for the fortification of their respective coasts and ports were excluded from the agreement. This convention was not renewed at the expiration of the five year period; on the contrary the two states appear to have proceeded with their armaments on the former basis. While in force it was faithfully observed by both sides, however; and it is stated that during this suspension of armaments in Argentina and Chili, a striking decrease of armaments took place in other South American states.[9]

Another notable movement of this period was the initiative taken by Great Britain to secure a diminution of naval armaments. The British government repeatedly declared its readiness to cut down its program of naval construction if the other naval powers would do likewise. In 1905, when Norway and Sweden dissolved the union which had existed for nearly a century, they took occasion to enter into a convention for the establishment of a neutral zone between them, within which all fortifications were to be dismantled, and all concentration of armed forces forbidden except in local emergencies. The convention further stipulated for arbitration of differences relative to its interpretation or application.

Work of the Second Hague Conference

In connection with the proposal of a Second Hague Conference, a movement was inaugurated in England to have the chief question to come before it an agreement for a general limitation of armaments, the British suggestion to this end contemplating a proportional reduction of naval expenditures for five years, or failing that, an arrest of expenditures for three years, with a view to reduction at a later date. But limitation of armaments fared no better at the Second Conference of 1907 than at the First, the question of armaments being hardly touched upon directly during the conference. The British government, however, declared its willingness to exchange with the other Powers its program of naval construction, thus facilitating an interchange of views between the governments on the subject of the reductions which it might be possible to effect by mutual agreement. No action appears to have been taken on this suggestion.

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[9] Wehberg, *op. cit.*, 25, note. On this agreement generally see *League of Nations* (*W. P. F. P.*), Vol. IV, 404 ff.

The Second Conference did go on record as theoretically in favor of the limitation of armaments, by the adoption of the following resolution proposed by Great Britain:

> The Conference confirms the resolution adopted by the Conference of 1899 in regard to the limitation of military expenditure; and inasmuch as military expenditure has considerably increased in almost every country since that time, the Conference declares that it is eminently desirable that the governments should resume the serious examination of this question.[10]

So also the Second Conference advanced somewhat the international recognition of the principle of arbitration, and incidentally the movement for disarmamant. It revised and strengthened the convention of the First Conference for the Pacific Settlement of International Disputes; adopted the so-called Porter Plan, which recognized the principle of compulsory arbitration in connection with the recovery of contract debts; and made a general declaration of faith in the feasibility of bringing specific classes of disputes under compulsory arbitration. Thus upon the theory — so dramatically brought out in the discussions of the armaments question in the Assembly of the League of Nations — that security and disarmament must go hand in hand, the Conference contributed something to the solution of the armaments problem.

Following the Second Conference negotiations took place between Great Britain and Germany looking to some agreement for the mitigation of the burden of naval competition between the two countries, but without result. During the same period, also, projects appeared from time to time for the reduction of armaments — in the books of European publicists and in the European press, at annual Peace Congresses, and in the Interparliamentary Union — the only practical result, however, being to stimulate interest in the matter. Discussion went far enough to indicate that the subject bristled with difficulties, and that progress towards any substantial modification of existing national policies would necessarily come as the result of fundamental changes in the spirit of international relations.

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[10] Wehberg, *op. cit.*, 31.

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Part VIII

THE LEAGUE OF NATIONS

CHAPTER XXI

ORGANIZATION AND NATURE OF THE LEAGUE

I. Antecedents of the League

The World War had far-reaching political results both national and international, two of which, at least, are of great significance for the student of international government. First, the existing state system underwent important changes in two respects: Of the three outstanding imperial states before the War — Russia, Austria-Hungary, and Germany — the first was transformed into a great experiment in communistic government, the second ceased to exist, while the third became a republic as the result of internal revolution following the War; and further, as previously pointed out, a group of new states, erected mainly upon the ruins of old Russia and Austria-Hungary, took their places in the international community — itself a development of primary importance to international government.

Second, out of the peace settlement following the War emerged a group of international institutions which mark the farthest advance yet made in the political organization of the World. Important as were the changes in political geography wrought by the War, of far greater moment to the future of international relations was the culmination, at Versailles, of the nineteenth century movement towards international government sketched in the foregoing pages. It will be worth while to summarize briefly the net result of this pre-war development by way of introduction to a study of the régime set up by the Peace Treaties.

The War itself, it must be admitted, was impressive proof of the gross inadequacy of international political organization — its lack of directive and coercive agencies commensurate with the need of control over nationalistic forces which, if not regulated in the common interest, inevitably mean war. International government had indeed made substantial progress. Its diplomatic service was dealing successfully, not only with the large mass of routine matters arising between governments, but occasionally with issues of extraordinary importance. Arbitration had gained very general recognition, both in bilateral treaties and in the setting up of the Permanent Court of International Arbitration at The Hague. The Hague Conferences, two of which had already been held, and a third proposed, promised to develop into an international institution of real deliberative power and influence.

Nevertheless, international political institutions fell far short of meeting the needs of international life. Along with the developments just noted there had proceeded another, already discussed as nationalism — a phenomenon difficult to define satisfactorily but readily recognized in its characteristic manifestations. Nationalism as an expression of the desire for an independent, self-contained, vigorous group life is a natural and inevitable characteristic of those forces — ethnic, cultural, economic, historical — which lie at the very foundation of the state; and in this view it is altogether admirable. But ever since the French Revolution nationalism has suffered from an excess of its essential virtue; nationality as the essence of the state has found exaggerated expression in nationalism. It has already been pointed out that nationalism and internationalism are not intrinsically antagonistic, but rather complementary; and this cannot be too often reiterated. But as it manifested itself in the nineteenth century, nationalism was in spirit unfriendly to international government. It stressed the rights of nations rather than their duties and obligations; it exalted national sovereignty above the community ideal. It favored the principle of arbitration but insisted upon the right to determine for itself, in each case as it arose, whether differences should or should not be arbitrated. It approved of conferences, but refused to be bound thereby without its express consent. While willing, on occasion, to waive its right to go to war over minor quarrels, it reserved absolute liberty of action as to the larger and more dangerous issues.

International Government Lacked Permanent Organization

The gravest weakness of the pre-war international system was its lack of permanent machinery. A beginning had been made in the creation of certain administrative bodies like the Universal Postal Union, and of the Hague Permanent Court of Arbitration, but except for the interests served by these institutions — and outside the traditional diplomatic service — international matters had to be dealt with sporadically, so to speak. Conferences met from time to time, deliberated, and passed out of existence. Even though a series of conferences might be held to consider varying aspects of some general policy — Near Eastern questions, for example — there was no essential continuity between them, no formal constitutional organization back of them, and no agencies set up to act in the intervals between them. There was abundant evidence that international relations had outgrown existing modes of political action, and needed a mechanism of permanent control armed with some measure of authority — capable, at least, of leading and focussing public opinion. The successive European crises of the decade before the war, resulting in makeshift settlements to avert armed conflict, were proof enough of the inadequacy of international government.

In the march of events which precipitated the World War, international government was put to the final test and found wanting. It had developed no institutions equal to the emergency, no collective authority capable of staying the resort to force until the conditions out of which the crisis arose could be impartially examined, and the policies immediately involved brought to the bar of public opinion. All its recognized agencies and methods were powerless to avert the catastrophe. Small wonder, then, that the war resulted in a profound re-examination of the principles of international political relations, and a resolute attempt to remedy its obvious weaknesses.

The abstract logic of the situation was clear. In a world of inter-related, inter-dependent states, war is antisocial and intolerable. Therefore, to make war cannot be the unconditioned right of any nation, because peace is vital to the whole community of states. It follows, then, that the community has the right to assure its own well-being by common action, to substitute peaceful measures for the coercion of war, and to back up those measures by force, if need be. This logic was not new, to be sure, but it gained unprecedented emphasis from the World War, which threw the delicate mechanism of international intercourse out of gear, and demonstrated that the nations had outgrown such a method of settling their disputes.

Historical Schemes of World Organization

Nor was the idea that peace could be advanced by some sort of an international organization any more novel; it had engaged the attention of thinkers here and there for centuries. Ideal schemes of international organization had appeared from time to time ever since, in 1623, Émeric Crucé, pioneer in this field, published his small book, *The New Cyneas*, in which he proposed a congress or assembly of ambassadors who should sit perpetually to pass judgment upon international differences that might arise.[1] Other notable schemes of world organization have been Sully's Grand Design, published in 1634, familiarly called the Grand Design of Henry IV; Penn's "Essay towards the Present and Future Peace of Europe by the Establishment of an European Dyet, Parliament, or Estates," published in 1693; Abbé Saint-Pierre's Project of the early part of the eighteenth century; [2] Kant's Essay on Perpetual Peace, of 1795; [3] and Ladd's Essay on the Congress of Nations, published in 1840.

Kant's remarkable essay, which set forth the underlying conditions, rather than a specific scheme, of international organization, laid down some of the guiding principles of modern internationalism: That perpetual peace depends upon the establishment of popular government in the several states; that the law of nations must be founded upon a federation of free states; and that there must be no forcible intervention, by one state, in the internal affairs of another state. After Kant came the Congress of Vienna and the Holy Alliance,[4] the Concert of Europe, and the international coöperative movements which characterized the nineteenth century, culminating in the First Hague Conference of 1899.

As already noted, international organization had not developed strength enough to cope with the forces of nationalism which precipitated the Great War. Nevertheless, progress had been made, and the record is instructive; indeed it would be impossible to understand the régime set up at Versailles without comprehending its immediate background. The great achievement of the nineteenth century was to bring international organization down from the clouds of ideal scheme-building, and to demonstrate its feasibility in the actual intercourse of states. No longer was it a monopoly of philosophers and theorists; a sense of its practical value — its sheer necessity, in fact, in a world of interdependent states — began to shape the policies of responsible statesmen, until at the outbreak of the War it had gained conspicuous, even if for the moment futile, triumphs. The significance of this transformation cannot possibly be overestimated.[5]

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[1] On Crucé see A. S. Hershey, *Essentials of International Public Law and Organization* (Rev. Ed., 1927), 67.

[2] Abbé Saint-Pierre's Articles of the Fundamental Treaty for Preserving the Peace of Europe are printed in Appendix I to Duggan, *League of Nations* (1919), 307. The Grand Design was published in 1909 by Ginn & Co., with Introduction by Edwin D. Mead.

[3] For Kant's Preliminary Articles of Perpetual Peace between States, see Duggan, *op. cit.*, Appendix II; also published by the World Peace Foundation (1914). The texts of many of these historic peace schemes may be found in W. E. Darby, *International Tribunals* (4th Ed., 1904).

[4] For text of the Declaration of the Holy Alliance, see Duggan, *op. cit.*, 318–319. For the European Congresses in the period 1815–1822 see *Cambridge Modern History,* Vol. X, Ch. I.

Proposals During the World War

During the progress of the War the ultimate peace was closely associated in the minds of constructive thinkers with the creation of an international organization to make it a real and lasting peace. Among the foremost, and certainly the most influential, of these thinkers was President Wilson, who on numerous occasions voiced the conviction that peace, once restored, could be assured only by the establishment of some international agency whereby the will to peace could find effective expression.[6] The last of his Fourteen Points definitely embodied this proposition as one of the conditions of peace with the Central Powers:

> A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

Not only was the issue thus presented in the abstract, but some attention was given during the War to the formulation of plans for an international peace organization. Among these proposals was that of the League to Enforce Peace, a scheme launched in the United States in 1915, and commanding wide support from leaders in both political parties. The proposals of this League were prophetic of the League of Nations, in that they embodied the essential principles later incorporated into the Covenant:

(1) The adjustment by judicial procedure of all justiciable questions; (2) the reference of all other disputes to a council of con-

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[5] On the earlier schemes of international organization see: Duggan, *op. cit.*, Ch. II on "The Historical Background of the League of Nations," by Carlton J. H. Hayes; F. C. Hicks, *The New World Order* (1920), Ch. V. on "Proposals for a League of Nations" and Ch. VI on "Former Leagues of Nations"; Elizabeth York, *Leagues of Nations, Ancient, Medieval and Modern* (1919); D. W. Morrow, *The Society of Free States* (1919), Ch. II; C. D. Hazen, *Europe Since 1815* (Rev. Ed., 1923), Ch. I; Edith M. Phelps, *Selected Articles on a League of Nations* (1919); C. P. Howland, *Survey of American Foreign Relations for 1928*, Part III, Ch. I; J. S. Bassett, *The Lost Fruits of Waterloo* (1918), Ch. II.

[6] For example, in his Metropolitan Opera House address on Sept. 27, 1918, he said, speaking of the essentials of a secure and lasting peace, that the nations must be ready and willing "to create, in some virile fashion, the only instrumentality by which it can be made certain that the agreements of the peace will be honored and fulfilled," *Int. Con.*, No. 131, 540 (1918), p. 59. On the development of his thought concerning the League see Phelps, *op. cit.*, 5–14.

ciliation "for hearing, consideration, and recommendation"; (3) the use of joint economic and military force against any signatory power that goes to war, or commits acts of hostility, against another signatory power before any question arising shall be submitted as above provided; (4) the creation of an international court to deal with all justiciable disputes.

In April, 1918, the executive committee of this League approved a tentative draft of a treaty for a League of Nations; it was not made public, however, until after the Covenant of the League had been drafted by the Peace Conference and had been discussed in the United States Senate; so that it could have had no direct influence upon the form or substance of the Covenant. It is of permanent interest, however, as representing the convictions of the numerous membership of the League to Enforce Peace throughout the United States.[7] Other peace schemes of the war period included that of Viscount Bryce and others termed "Proposals for the Prevention of Future Wars," and "Articles of a Treaty establishing a Supernational Authority that will prevent War," proposed by the Fabian Society of England."[8]

An impressive object lesson in international coöperation was afforded by the policy of united action and common control adopted by the Allies late in the War. Initiated at an Inter-Allied Council in Paris at the end of 1917, which was attended by the representatives of seventeen states, it rapidly expanded into a vast system of centralized control dealing with all the vital requirements of the several allies. Great councils and committees were set up to cope with such problems as food supply, transport, war purchases and finance, and military and naval coördination, with a Supreme War Council, aided by a Permanent Central Military Committee, at its head. The world never saw unity of international action on so colossal a scale; and while it was inspired and sustained by the exigencies of war, it was seen to be applicable in principle to the problems of peace and in the normal intercourse of nations.[9]

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[7] On the League to Enforce Peace see "The Conciliation Plan of the League to Enforce Peace," *W. P. F. P.*, Vol. VI, No. 5 (1916); also A. Lawrence Lowell, same for Oct., 1915.

[8] These schemes are analyzed by L. S. Woolf, *The Framework of a Lasting Peace,* 59 ff. The Fabian Society's plan is printed in L. S. Woolf, *International Government* (1916). See also Hicks, *op. cit.*, 75 ff.

[9] Space forbids mention of the details of this great scheme of international coöperation. It is discussed by Hicks, *op. cit.*, Ch. XIV, and by J. P. Cotton and D. W. Morrow in Duggan, *op. cit.*, Ch. III. See also *A League of Nations* (*W. P. F. P.*), Vol. I, No. 7, on "The Supreme War Council."

The League in the Peace Conference

Thus matters stood when the Peace Conference convened. More insistent and absorbing for the moment than the question of the future peace of the world was that of the immediate peace settlement. Indeed, it has been urged that the Conference was ill-advised in undertaking to work out a scheme of international organization in an atmosphere charged with partisan feeling; that it would have been wiser to postpone the attempt to a later time and a more auspicious occasion. On the other hand, it is argued that the sense of the necessity of a more adequate organization for peace was then keener, and the readiness of states to coöperate in setting up such an organization greater, than they would have been later, and that the event has demonstrated the wisdom of the Conference.

It may be conceded that a better league covenant might have been framed in a conference less surcharged with passion and untroubled by the knotty problems of a peace settlement; but it is exceedingly doubtful whether since the peace, and apart from the influence which the League itself has exerted upon the temper of international life, the nations have been in any more favorable mood for such an undertaking than they had been before the War — which is but another way of asserting the grave improbability that any League would have come into existence. It is certain that any attempt to set up such an institution in the pre-war period, even as late as the Hague Conference of 1907, would have suffered defeat; indeed, no responsible statesman had the hardihood to propose it.

Assuming, then, that a league which bears some scars of the diplomatic conflict in the midst of which it was born is better than no league at all, the Conference was justified in its undertaking. From another point of view it may be said that the League came into existence at a most opportune time. Certain problems which the Conference could not fully solve were bequeathed to it, as a convenient if not a courageous way of disposing of them. This has been at once a source of strength and of weakness for the League. It has been troubled with innumerable thorny problems growing out of the responsibilities thus thrust upon it; but on the other hand it has derived support from the fact that it was bound up with the peace in a way to make its continuance highly desirable if not necessary.

Sentiment in the Peace Conference was not undivided on the advisability of attacking the problem of a league, but being virtually committed to the undertaking by President Wilson's Fourteenth Point, which, moreover, had influential backing, the Conference early declared itself in favor of a league.[10] As soon as the preliminaries of organization had been settled the Conference set up a Commission on the Formation of a League of Nations, headed by President Wilson. Its work, based upon a draft previously agreed upon by several leaders in the movement, took the form of a tentative draft approved by the Commission on February 13, 1919, and was finally adopted, as amended, at a plenary session of the Conference on April 28. It became part of the peace treaty, and thus did not become fully effective until formal ratification of the treaty.

On the adoption of the Covenant provision was made for a committee to prepare plans for the organization of the League, the establishment of the seat of the League, and the agenda of the first meeting of the Assembly. The League came into existence on January 10, 1920, eighteen states then becoming members by giving their formal approval to the Treaty of Peace with Germany.[11] Thus the Peace Treaty, as it came from the Conference, made provision for three great institutions of international government — the League of Nations, the International Labor Organization, and the Permanent Court of International Justice. In the chapters following an attempt will be made to outline, necessarily in general terms, the organization and work of these institutions.

II. MEMBERSHIP OF THE LEAGUE

Obviously one of the most important questions before the Conference was that of membership in the proposed League. Lord Bryce's group had proposed that the Great Powers should be members, as of right, and any other European state that might wish to adhere, the idea being that the admission of a large number of states "not intimately connected with European politics might seriously hamper the earlier stages of the arrangement." [12]

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[10] By the adoption, on January 25, 1919, of a resolution drafted by the Supreme Council.

[11] There is much interesting material on the drafting of the Covenant, and on the sources from which it was drawn, — the Phillemore plan, so-called, the Smuts plan, President Wilson's first draft prepared by Col. House, etc. Among the many works that might be cited are the following: D. H. Miller, *The Drafting of the Covenant* (1928), with a collection of documents; Florence Wilson, *The Origins of the League Covenant* (1928); H. W. V. Temperley, *History of the Peace Conference of Paris* (1924), Vol. VI, Ch. VI, 426 ff.; Ray Stannard Baker, *Woodrow Wilson and World Settlement* (1923), Vol. I, Part III; C. Howard-Ellis, *The Origin, Structure and Working of the League of Nations* (1928), 69 ff.; Charles Seymour, *The Intimate Papers of Colonel House*, Chs. I, II, and IX (1928). The text of several of the preliminary plans for the League may be found in J. E. Harley, *Selected Documents* (1926), Part II.

Fortunately this suggestion was not adopted; on the contrary, the League was placed on a broad democratic basis. Article I of the Covenant provides that the original members of the League shall be those of the signatories of the treaty which are named in an Annex to the Covenant, and also such of certain other states named in the Annex as should accede without reservations to the Covenant.

But these two lists did not embrace all the states in the world; hence provision was made for further accessions to membership, as follows:

> Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces, and armaments.

Thus, technically, there are three classes of members: (1) Those which became such as parties to the treaty; (2) those named in the Annex, not signatories, which acceded to the Covenant; (3) those admitted, on application, by a two-thirds vote of the Assembly, after giving the required guarantees. This classification is of no great importance, however, as members enjoy the same legal status, in general, however they may have become such.

The standards of eligibility to membership adopted by the Conference qualified India and the so-called British self-governing dominions, and were sharply criticized on that ground. In fact, the Conference faced a condition and not a theory on this point. The dominions had given loyal support to the allied cause, and were represented in the Conference. To have excluded them from the League, while admitting such unimportant states as the Hedjaz and Haiti, would have been palpably unjust and absurd.[13]

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[12] L. S. Woolf, *The Framework of a Lasting Peace* (1917), 67 ff., gives the text of these proposals.

[13] The declaration of the British Imperial Conference of 1926, to the effect that the self-governing dominions are on a basis of entire political equality with the United Kingdom, materially weakens the argument against their admission to the League.

Admission and Withdrawal of Members

Thus the important power of admitting new members to the League was conferred exclusively upon the Assembly, the Council having no part in it save as its members are also members of the Assembly.[14] At the opening of the First Assembly in 1920 the members numbered forty-two. At each Assembly thereafter up to and including that of 1924, one or more members were admitted; and finally, the most important accession to the League was made in 1926, when Germany was voted in unanimously, making the maximum number of members admitted to the League fifty-seven. On January 1, 1929, the members numbered fifty-four.

The same article of the Covenant provides:

> Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

Under this provision Brazil, which became a member in 1920, served notice of withdrawal which became effective on June 13, 1928; and Costa Rica, also a member since 1920, severed connection with the League on December 31, 1926. In September, 1926, Spain gave notice of withdrawal, but before it became effective decided to remain a member. Argentina has participated in the work of the League through executive agencies, but the Argentine Congress has not yet formally approved the Covenant.[15]

League membership may be terminated in two other ways: First, any member which has violated any covenant of the League may be declared to be no longer a member by a vote of the Council concurred in by the representatives of all the other members of the

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[14] In dealing with applications for membership, the Assembly has had some knotty and delicate questions to answer, especially in determining whether or not an applicant state was large or stable enough to justify its admission. See article by Manley O. Hudson on "Membership in the League of Nations," 18 *A. J.*, 436 (1924).

[15] See *Nine Years of the League*, by Denys P. Myers (1929), *W. P. F. P.*, Vol. XII, No. 1, p. 15. In July, 1928, in reply to an invitation from the Council to resume its connection with the League, Costa Rica requested of the Council a definition of the Monroe Doctrine. This the Council declined to give, and Costa Rica remained a non-member. For the communications see *Monthly Summary* for Sept., 1928, 233. Nine states not members are listed as eligible for admission to the League, all of which participate more or less in its work, and frequently accede to its international conventions. Myers, *op. cit.*, 20.

League represented thereon.[16] Second, a member which signifies its dissent from an amendment to the covenant shall cease to be a member of the League.[17]

In order to keep in close and constant touch with the activities of the League, in its almost continuous series of conferences and committee meetings, a considerable number of states have permanent representatives accredited to the League. So also many states have made provision for a League of Nations section in their ministries, charged with the special function of transacting business with the League.

The important power of amending the Covenant is carefully safeguarded by the provision that amendments must be ratified by the members of the League whose representatives compose the Council and by a majority of the members whose representatives compose the Assembly.[18] Thus the Council may control the exercise of this power as against the Assembly, thereby safeguarding the Great Powers in the enjoyment of permanent seats in the Council, and the Council itself against infringements upon its powers. The amending process has been resorted to on several occasions, but not to modify the Covenant in any fundamental respect.[19]

The League acts through the instrumentality of the Assembly and Council, with a permanent Secretariat. Closely associated with its activities are, also, several administrative and advisory commissions, two of which, the Mandates Commission and the Permanent Commission on Military, Naval, and Air questions, are provided for in the covenant.[20] In order to understand clearly the nature and powers of the League, and its methods of work, it is necessary to outline the constitution and functions of each of these agencies, having regard both to the specific provisions of the Covenant and to the course of their development in practice.

III. THE ASSEMBLY: ORGANIZATION AND FUNCTIONS

As has been stated, the Assembly consists of all the members of the League; it is the fully representative organ of the League, standing for the equality of the member states. It controls its own membership, inasmuch as it has the exclusive right to admit duly qualified states as new members by a two-thirds vote.[21] This is one of its most important powers. Each member is entitled to have not more than three representatives in the Assembly; these representatives cast the one vote to which each member state is entitled.[22] While the official delegation from each state is limited to three members, many states send three or four delegates-substitute to assist the regular delegates in their committee or other work, together with expert advisers and clerical assistants. For example, the full British delegation to an Assembly usually numbers some twenty-five or thirty persons.[23]

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[16] *Covenant,* Art. XVI, Par. 4.

[17] *Ibid.*, Art. XXVI.

[18] *Ibid.*

[19] Important amendments intended to bring the Covenant more into harmony with the Kellogg Pact are now under consideration. See Ch. XXXII, Sub. IV.

[20] The former by Art. XXII, and the latter by Art. IX.

Selection of Delegates to the Assembly

Each member state appoints its delegates in its own way, depending upon its constitutional method of exercising the appointing power. They are generally named by the Prime Minister in states where the government is of the cabinet type. As a matter of fact, it is coming to be considered the official duty of the Prime Minister, or of the Foreign Minister, to attend the annual meetings of the Assembly. For example, at the tenth ordinary session of the Assembly, in 1929, which included delegates from fifty-three of the fifty-four member states, six were represented by Prime Ministers and twenty-two by Foreign Ministers. Thus, it may be noted in passing, governments may take advantage of this meeting of their responsible ministers to hold conversations on pending international questions of importance.

Popular election of delegates has been proposed, upon the theory that the League should be deemed one of peoples, not of states, and its policies under immediate popular control. Whatever may be said for this theory, from the standpoint of democracy, it is foreign to the League as now organized, for it is a League of States, not of peoples; the peoples of the several member states can direct the policies of the League only through their respective governments. The choice of representatives, and the dictation of their action upon League questions, is purely a governmental function. Of course there is nothing to prevent a government from selecting its delegates by any method of election, direct or indirect; the point is that the

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[21] *Covenant,* Art. I. To the Council, however, is given the power to expel a member. *Ibid.,* Art. XVI.

[22] *Ibid.,* Art. III.

[23] H. W. Harris, *What the League of Nations Is* (1927), 21.

League has no power to dictate as to the constitutional forms of action of its members.[24]

Under Article VII of the Covenant, which opens all positions under or in connection with the League, including the Secretariat, equally to men and women, the latter are eligible to seats in the Assembly. Seven women sat as delegates in the Tenth Assembly, in 1929, and several governments regularly include a woman among their delegates-substitute.

Each Delegation Casts the Vote of its Government

While the delegates, especially if they happened to be of different political parties, or of different wings of the same party, might concievably differ in their individual views on questions before the Assembly, and even express such differing views on the Assembly platform, it is nevertheless a settled principle that each delegation represents its government, and votes in the name of its government. However its decision may be determined, whether by the Prime Minister in case he heads the delegation, or by specific instructions from the home government, its vote is that of its government. There is much popular misconception on this point, which must be clearly understood if the true nature of the League, and the principles on which it functions, are to be grasped. The Assembly is not a representative body in the national sense; it is rather a diplomatic body. The delegates therein act upon instructions, not as legislators; their votes, each delegation acting as a unit, are the votes of their respective governments, not their own. It may be, of course, that the delegates of a member state will be accorded wide latitude of discretion on relatively unimportant matters; but on the larger issues, and theoretically on all questions, they are the mere mouthpieces of their governments.

Specific Powers of the Assembly

The expressly delegated powers of the Assembly are less numerous than those of the Council. It was not intended to be, and its development thus far does not indicate that it is likely to become, an executive body. It is obviously unfitted for such a rôle, both because of its unwieldy size, and because it meets too infrequently to deal with matters of administration. Moreover, it has no permanent organization — no committees or commissions which function during the intervals between Assemblies. In so far as the policies adopted by an Assembly are prosecuted beyond its own life, they must be taken over by the Council, the Secretariat, or some body acting by delegated authority — unless, of course, a succeeding Assembly returns to them.

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[24] On this point see H. M. Kallen, *The League of Nations* (1918), 43; Sir Frederick Pollock, *League of Nations* (2nd Ed., 1922), 99; Howard-Ellis, *op. cit.,* 114 ff.

Its power over its own membership, and therefore over the membership of the League, is plenary, save as the Council is empowered to declare a covenant-breaking member of the League no longer a member. As already stated, it may admit to membership duly qualified political units by a two-thirds vote. The Council as such, while its members also sit in the Assembly, has no part in this highly important action; nor could the Council members in the Assembly defeat an application for membership, because they number less than one-third of the total membership of the Assembly. This power over League membership was wisely vested in the Assembly alone; had it been made dependent upon concurrent action by the two bodies, unfortunate deadlocks would have been possible. Again, the Assembly controls the choice of a majority of the Council, as the non-permanent members, now numbering nine as against the five permanent members, are elected by the Assembly under rules fixed by a two-thirds majority; nor may the Council increase the number of its own membership, either permanent or non-permanent, without the approval of a majority of the Assembly. Conceivably this power over the membership of the Council might be directed to the control of its policies, but no such tendency has thus far developed.

As already noted, it passes upon applications for membership in the League, and may propose amendments to the Covenant by a two-thirds vote which must, however, include the votes of all the members of the Council represented at the meeting. So also, as stated above, it elects the non-permanent and semi-permanent members of the Council, prescribing by a two-thirds vote the regulations relating to their term of office, and the conditions of reëligibility.[25]

Under Article XV of the Covenant relating to the powers and duties of the Council in dealing with disputes between members of the League, provision is made for the removal of disputes to the Assembly, either by the Council on its own motion or at the request of either party to the dispute if made within fourteen days after the submission of the dispute to the Council. In the event of such removal the Assembly, in dealing with the dispute, is subject to all the provisions of the Covenant relating to the action and powers of the Council in like cases. Thus far no dispute has been referred to the Assembly, and it is safe to say that these provisions for removal will seldom if ever be invoked, unless conceivably when the Assembly happens to be actually in session when the dispute arises.

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[25] See below, Sub. IV.

General Power of the Assembly

There remains the broad delegation of authority, identical in terms with that conferred upon the Council, to " deal with any matter within the sphere of action of the League or affecting the peace of the world." [26] In terms this provision is of the widest possible scope. Nowhere is the " sphere of action of the League " specifically defined; and manifestly the peace of the world may be affected in infinitely various ways, involving numberless complications of events and combinations of states. As a practical matter, however, having regard to the limitations imposed upon the League by the Covenant — the unanimity rule, for example, which means that no state can be coerced into support of League policies against its will — and to the further fact that the League as such commands no military or naval force, this provision simply means that the Assembly may consider matters within the jurisdiction of the League, formulate its opinion thereon if it sees fit to do so, and recommend to the member states of the League what it considers measures appropriate to meet the situation.[27]

To " deal " with a matter in the Assembly means ordinarily to discuss it — to drag it into an open forum and place it before the public opinion of the world. If the action of the Assembly should finally take the form of a proposed treaty, such treaty would still be subject to ratification by the member states, and could be rejected by them, notwithstanding unanimous action on the part of the Assembly. The same principle applies to the work of the Council. It is clear that the sphere of action of the League embraces only international matters; its competency does not extend to disputes and matters entirely within the domestic jurisdiction of the member states. This is specifically provided as to the Council when it acts as a tribunal of conciliation; [28] and the Assembly has no broader jurisdiction when it acts in the same capacity.

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[26] *Covenant,* Art. III.

[27] See further on this point Sub. IX of this chapter.

[28] *Covenant,* Art. XV, Par. 8. For discussion of this function of the Council see below, Ch. XXXIII.

Voting Rules in Assembly and Council

The general voting rule of unanimity is prescribed for both Assembly and Council by Article V of the Covenant as follows:

> Except where otherwise expressly provided in this Covenant, or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

The article further provides that all matters of procedure may be decided by a majority of the members represented at any meeting of the Assembly or the Council. It follows that in more or less routine matters such as the appointment of committees, for example, the majority rule applies. Moreover, the Covenant expressly provides for action by the Assembly, in several cases, by vote falling short of unanimity.[29] Unfortunately, the Covenant does not lay down any rule whereby to distinguish between "decisions," which require a unanimous vote, and matter of "procedure," for which only a majority vote of the members represented at the meeting is prescribed. Ordinarily the distinction is clear enough, but it may involve a close question. Thus in the consideration by the signatory states of the reservations embodied by the United States Senate in its resolution of adherence to the Protocol of the Permanent Court of International Justice, especially the resolution relating to the rendition of advisory opinions at the request of the Council, the important question was raised whether action by the Council requesting an opinion was of the nature of a decision requiring unanimity, or merely procedural.

These inroads made by the Covenant upon the traditional rule of unanimity in international bodies are of great significance, not because they indicate any marked disposition on the part of states, as yet, to be bound without their consent, but as evidencing a growing recognition of the folly of shackling international procedure by unnecessary and unreasonable voting restrictions. As working organizations the League bodies, like all international conferences, are weakened by the unanimity rule; but the Covenant-makers were bound to adopt it in order to " reassure timorous spirits against the phantom of a super-state, and to indicate in a decisive way that a state entering the League loses no valuable part of its liberty and independence.[30] It should be borne in mind, however, that despite the rule of unanimity, any measure very generally favored is likely to prevail in the long run. Unanimity saves the theory of sovereignty without being an insuperable obstacle to achievement.[31]

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[29] Among the more important of these cases are the election of the non-permanent members of the Council, by majority vote, and of new members of the League by a two-thirds majority; it also approves of additional Council members by majority. For an enumeration of the cases where the Assembly or Council may depart from the rule of unanimity see Howard-Ellis, *op. cit.*, 124. Under the Statute of the World Court its judges are elected by majority vote of the Assembly and Council.

As a matter of fact, it is as an open forum of discussion that the Assembly serves its most valuable purpose. It always sits in public, and so far as the limited time for the transaction of its growing volume of business will permit, an opportunity is given the delegates, regardless of the importance of the states they represent, to air grievances and debate policies. The result of such debate may be the initiation of far-reaching and important measures — such, for example, as the so-called Geneva Protocol, which was before the Assembly of 1924.[32] Important as this quasi-legislative function of the Assembly may be, however, its most useful contribution to international government is as a great world conference wherein the representatives of the member nations meet to promote a better acquaintance, to discuss current problems, and to focus attention upon proposals for the betterment of international relations.

How the Assembly Functions

The Assembly meets annually at Geneva on the first Monday in September. The Covenant provides for meetings " at stated intervals and from time to time, as occasion may require." [33] Only once has it met in extraordinary session — in March, 1926, to act upon the admission of Germany into the League. The first few days of the session are devoted to the report of the Secretary-General of the League on the work of the Council for the preceding year — that is to say, on the whole work of the League during that period. This report is an elaborate summary of the activities of the Council and the Secretariat, and of the measures taken to execute the decisions of the Assembly; and apart from any specific action it may suggest, it serves to keep the Assembly in close touch with the progress of international events as affected by the League. Each Assembly is advised of what has been done by other League agencies to carry out the policies of its predecessors, and may be called upon to express approval or disapproval thereof. So also, his report affords the Secretary-General a means whereby to guide the future policies of the Assembly by suggestions or recommendations.

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[30] H. A. L. Fisher, *An International Experiment* (1921), 25.

[31] Pollock, *op. cit.*, 103–104.

[32] See Ch. XXXI, Sub. V.

[33] *Covenant,* Art. III.

The working organization of the Assembly consists of six large committees, on each of which every member is entitled to a representative, which consider all matters within their respective jurisdictions and report fully thereon to the Assembly. The six classes of questions usually dealt with by these committees are: (1) Legal and constitutional questions; (2) technical organizations; (3) reduction of armaments; (4) budget and financial questions; (5) social and humanitarian questions; (6) political questions, including mandates. The Assembly goes on record, in a series of resolutions, as to the various matters raised by the reports of these committees or otherwise presented for consideration. Like all international conferences, the Assembly has a definite agenda, or order of business, prepared in advance by the Secretary-General. Questions can be placed on the agenda at the request of a government, or by the Council, or by decision of the Assembly itself, or as unfinished business left over from the last Assembly.

The Assembly is a hard-working body. Its comparatively brief sessions of a few weeks afford scant time to transact its necessary business. Its committee work is thoroughly done, and such special functions as that of electing the non-permanent members of the Council and the Judges of the Permanent Court of International Justice are conscientiously performed. As a recent writer suggests, the idea that the Assembly is a mere debating society, or a " show window for the League," is quite erroneous.[34] It takes its work seriously, and does it well. There is force in the further suggestion of the same writer that there should be semi-annual sessions of the Assembly, of three or four weeks, to enable it to give adequate attention to the weighty matters before it.

In general, the development of the Assembly strikingly illustrates the inevitable play of evolutionary forces upon political institutions. Endowed with less actual power than the Council, it has become, on the whole, the dominant factor in the League, certainly in so far as the general control of policy is concerned. To a certain extent the Council has really promoted this tendency — as when, for example, it established the practice of transmitting the League budget to the

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[34] Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), 394.

Assembly for final action. The Council meets more frequently, and deals with more critical and spectacular situations; moreover, it has important administrative duties not shared by the Assembly — such as supervising the mandates and entertaining complaints under the minorities treaties.[35] Nevertheless, the prestige of the Assembly has grown steadily. It is the one completely representative organ of the League, and as such has made good its position as the policy-forming agency of the League, despite its rather vague and scanty endowment of constitutional powers.[36]

IV. The Council: Organization and Functions

As between the Council and the Assembly, the former was intended by the framers of the Covenant to be the less representative and the more powerful. In composition the Council differs fundamentally from the Assembly in that it consists of a limited number of states, whereas the Assembly comprises all states members of the League. As originally constituted the Council was to consist of representatives of the United States of America, the British Empire, France, Italy, and Japan — called the Principal Allied and Associated Powers — and of four members of the League to be selected by the Assembly from time to time; until selection should be made by the Assembly these members were to be Belgium, Brazil, Greece, and Spain.[37]

Thus the so-called Great Powers were given a predominant place in the Council. This provision was freely criticized both as unjust and in violation of the fundamental principle of state equality, and added weight was given to the criticism by reason of the large powers, both general and specific, conferred upon the Council. As against this view it was pointed out that the general rule of unanimity prescribed by the Covenant negatived, theoretically at any rate, the possibility of arbitrary action on the part of the Great-Power majority; and that anyhow, the theory of state equality must yield, in the constitution of so powerful and responsible a body as the Council, to the evident facts of international life.

Enlargements of the Council

The development of the Council in point of membership has been interesting. Under Article IV of the Covenant the Council may, with the approval of a majority of the Assembly, name additional permanent members of the Council; and this was done in the case of Germany, which was given a permanent seat in the Council on election to the League in September, 1926. So also, under the same article, " the Council with like approval may increase the number of members of the League to be selected by the Assembly for representation on the Council." Under this provision the Council has been twice enlarged by the addition of non-permanent members elected by the Assembly: first in 1922, when two additional members were admitted, and again at the seventh Assembly in 1926, as the result of a rather comprehensive scheme of reorganization.

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[35] Discussed in Chs. XXIII and XXIV.

[36] On the Assembly generally, see Potter, *op. cit.*, Ch. XXII.

[37] *Covenant,* Art. IV, Par. 1.

This bit of League politics may be referred to as illustrating the fundamental problem of international government — that of reconciling the nationalistic point of view with sound principles and wise policies. When it was proposed, at the special session of the Assembly held in March, 1926, to give Germany a permanent seat in the Council, Spain, Brazil, and other states demanded permanent seats as well. This demand could not be conceded without establishing a dangerous precedent. Moreover, largely to increase the size of the Council would make it so unwieldy as to be unfit for some of the executive work imposed upon it, and perhaps to disturb the balance between the two League bodies. Hence the whole matter was referred to a special committee for consideration and report at the following September meeting of the Assembly. The result was a decision then taken to increase the number of non-permanent members of the Council from six to nine, and to provide for a three-year term for each member, three members retiring each year and being ineligible to membership during the ensuing three years unless the Assembly should decide otherwise by a two-thirds vote.

Thus were created what have been called semi-permanent seats, to be held as long as two-thirds of the Assembly approve. Poland was declared reëligible by the Assembly of 1926, and Spain in 1928. The result of this controversy over Council seats was not altogether satisfactory. The Council has emergency duties to perform, especially when called upon to deal with threatening relations between states, such as developed, for instance, between Greece and Bulgaria in 1925; [38] and on such occasions it becomes imperatively necessary for it to convene at the earliest possible moment. In the Greco-Bulgarian crisis the Council convened within a few hours, the representative of one member making the journey by airplane to

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[38] See Ch. XXXIII, Sub. II.

Paris. A greatly enlarged Council could not meet with the same facility, the result being that delay might handicap it in dealing with such situations, or that action would have to be taken by a limited number of members. Or again, Council members might undertake to act at long range, and without the benefit of close contact with other members. Moreover, agreement is much more difficult in a large executive body, especially when decisions must be unanimous. Problematical, also, is the effect upon the prestige of the Assembly of a substantially enlarged Council. And finally, it was felt by many that the action taken was dictated by doubtful expediency rather than by wise statesmanship, having regard to the precedent thus set of yielding to the pressure of a disgruntled minority.

On the other hand it could be argued that, while the Council should be kept as small as possible to make it an effective executive body, it should also be representative if its decisions are to be generally respected.[39] Whatever may be the ultimate result of enlarging the Council, in other respects, it has materially weakened the dominating position of the Great Powers thereon. Instead of being a majority of the members, they are now definitely in a minority. Thus the objection strongly urged against the Council as originally constituted, that it grossly violated the rule of state equality, has become less tenable.

In addition to the permanent, non-permanent, and semi-permanent members of the Council, it may on occasion include other states. Under Article IV of the Covenant, any member of the League not represented on the Council shall be invited to send a representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that member. Thus, when the Council was dealing with the financial reconstruction of Austria, representatives not only of Austria but of Czechoslovakia, Jugoslavia, and Roumania, neighboring states not members of the Council, were admitted to the conference; and even non-member states have likewise been admitted when differences between them and a member state have been under consideration.[40]

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[39] Roth Williams, 129 *Contemp. Review* (1926), 585. See on this action Harold S. Quigley, *From Versailles to Locarno* (1927), 24 ff. See also *W. P. F. P.*, Vol. X, 143–154, on "The Council Crisis."

[40] The usual practice is illustrated by the appearances of Poland and Lithuania at different times when the Council was considering their dispute over Vilna. It has been contended that only half-hearted use has been made of this provision of the Covenant, and that if it were more generally resorted to, many of the grievances of states not in the Council would disappear. See Roth Williams, "The Reorganization of the League Council," 129 *Contemp.*

Meetings — Membership

The Council meets at least four times a year — in March, June, September, and December — usually at Geneva, the seat of the League. It may hold special sessions if occasion arises. Its sessions are generally public, though it may sit in private, and does so regularly when certain kinds of business are under consideration; but a fairly complete record of the proceedings in executive session is made public. Each member state selects its own representative in its own way, and changes of government may mean changes in Council representation. The custom seems to be growing of having the states represented by their Premiers or Foreign Ministers. Hence it has lately been suggested that four regular meetings a year constitute too great a burden upon these overworked officials, and that the number could well be reduced, leaving urgent matters to be dealt with at special meetings.

The Council for the year 1930–1931 consists of the following member states: British Empire, France, Germany, Italy, and Japan, all permanent members, and Guatemala, Irish Free State, Norway, Persia, Peru, Poland, Spain, Venezuela, and Jugo-Slavia, the nine non-permanent members. At the September, 1930, election, Guatemala, Irish Free State, and Norway were the new members elected. Poland and Spain are semi-permanent members. China requested a semi-permanent seat, but failed to secure the necessary two-thirds vote entitling her to one.[41]

Powers of the Council

It was unquestionably the intent of the framers of the Covenant to make the Council the dominant factor in the League. Special executive functions of major importance were conferred upon it exclusively, such as the administration of Danzig and the Saar, and supervision of the mandates. The Council was intended to be primarily an executive body, and it has very largely assumed that character.[42] Again, it was made a tribunal of conciliation to deal

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Review (1926), 585. But it appears that many states not members of the Council, and even representatives of organizations both of League and non-League origin, appear at sessions of the Council dealing with matters concerning them, and participate in the proceedings. In 15 sessions in 1925–1927 a total of 120 states and 58 committees participated.

[41] *Monthly Summary* (Oct., 1928), 258.

[42] In fact, in the draft covenant first approved by the Commission on the Formation of a League of Nations it was called "Executive Council." For text of this document see *Official Documents*, 13 *A. J.*, 113 (1919).

with international disputes not settled by diplomacy or by resort to judicial or other pacific means. Finally, it was given the broad power, coördinate with that of the Assembly, to "deal with any matter within the sphere of action of the League or affecting the peace of the world." The scope of this delegation of power has been indicated in outlining the powers of the Assembly. Like the Assembly, the Council is devoid of coercive power save as the member states see fit to adopt and effectuate its recommendations. The practical work of the Council, in the various fields assigned to it by the Covenant, will be discussed in subsequent chapters.

It should be made clear that the Council is made up of states, not of individuals. Each member is entitled to but one representative and one vote. When the representative votes he acts for his government in a diplomatic capacity. If he were empowered to bind his government without specific instructions, by reason of his official position in the government, his vote would have that effect; otherwise he would vote under instructions from his government.[43]

In general, the activities of the Council are more varied than those of the Assembly. It has the same constitutional power of dealing with international situations within the scope of the League; it shares with the Assembly certain powers, notably the election of Judges of the Permanent Court of International Justice, while in addition it has important administrative functions in which the Assembly takes no direct part. Its policies even in its special field may, of course, be criticized and influenced by the Assembly, but not controlled. Its functions as conciliator in disputes between members is exclusively its own — save, indeed, as a dispute may pass to the Assembly at the request of one of the disputants, or on the Council's own motion. To the world at large the Assembly is doubtless the more complete and obvious embodiment of the League, but if the Council establishes the custom of holding its sessions in different places other than Geneva, the seat of the League, it will thus make the League a reality to widely separated peoples.[44] It should be borne in mind that the members of the Council are also members of the Assembly, and thus in a measure able to impress upon the latter body the views of the Council upon pending questions of policy. In fact this dual membership of the states represented in the Council may account in part for the lack of friction between the two bodies, and the willing acquiescence of the Council in the growing authority of the Assembly.

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[43] This principle raises difficulties for governments like that of the United States, where the powers of the executive, under whose instructions the delegate would ordinarily act, are limited by constitutional provisions, especially as to policies wherein the concurrence of the legislature, or one branch of it, is necessary.

[44] One of its recent meetings was in Lugano, Italy, and its June, 1929, meeting was in Madrid. A meeting in Ottawa, Canada, has been proposed.

So much for the formal organization and powers of the Assembly and the Council. That these bodies have fully met the expectations of their creators would be saying too much, doubtless; but their ten years' record has been creditable, and gives promise of even greater future usefulness. Apart from the exercise of their specific covenant powers, they have undoubtedly exerted a potent influence in the opportunity they afford for better acquaintance among those responsible for foreign policy in the member states, and for the informal and friendly exchange of views at their sessions. This is especially true of the Council because of its more frequent meetings. One weakness of the old diplomacy was its long-range, cumbersome means of communication, inevitably resulting in delay when quick action was necessary, and breeding suspicion instead of mutual confidence. A great gain was made for better understanding when statesmen were frequently brought face to face for the informal discussion of their problems. It would be easy to cite illustrations of far-reaching policies that have been by-products, so to speak, of these periodical League conferences.[45]

Outside its specific functions the activities of the Council take a wide range. It is a supervising body.

> In general, says Howard-Ellis, the rôle of the Council as regards international coöperation is simply to keep in touch with the work of the subsidiary organizations and see that they keep on the lines laid down by the Assembly within the framework of the Covenant.[46]

Thus it furthers a major purpose of the League; as a coördinating and conciliating body it serves to promote a better understanding, not only among its own members but throughout the entire group of associated states.

V. RELATIONS BETWEEN ASSEMBLY AND COUNCIL

It is not easy to determine the precise relations between the Assembly and the Council by an analysis of the Covenant. From what has been previously stated, it might be inferred that the

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[45] For a comprehensive analysis of the nature of the Council, and of its place in the League, see Potter, *op. cit.*, Ch. XXIII.

[46] *Op. cit.*, 157.

Assembly was analogous to a parliamentary body and the Council to a cabinet, the latter a part of the former in point of personnel, but exercising functions of a more distinctively executive character. In a measure the analogy is sound, but over-stressed it would be misleading. The basic principle of cabinet or parliamentary government is that the cabinet, while exercising leadership in parliament, is nevertheless at the mercy of parliament, bound to give way whenever it fails to command the support of parliament. The Council bears no such relation to the Assembly. It is under no constitutional obligation to formulate policy for the Assembly, nor is it dependent upon the Assembly for its continuance in office. The Assembly holds no power of life or death over the Council, nor may it control, in the parliamentary sense, the action of the Council; neither body, indeed, is legally dependent upon the other. It is true that through its power to elect a majority of the members of the Council, the Assembly might, if it saw fit, shape to some extent the policies of the Council; but once constituted the Council is quite independent of any coercion on the part of the Assembly.

On the other hand, the Council would feel free to suggest measures for the consideration of the Assembly, but not in recognition of any constitutional duty to do so; nor would the Assembly be under any obligation to act upon such suggestions. The Council may place items upon the agenda of the Assembly, but here again, the Assembly is free to act independently of the Council; nor is the Council, in turn, officially affected by any determination of the Assembly. In practice the Council tends to become the executive of the Assembly; it is better fitted than the Assembly to exercise such functions, in point of size and the rapidity with which it can be assembled. Moreover, apart from the course of its development, the special powers with which it is endowed clearly indicate that it was intended to be executive rather than legislative in function; however, the Covenant makes it clear that in the ordinary exercise of its administrative functions it is quite independent of the Assembly.

Not Analogous to Houses of Parliament

Again it might seem, from another point of view, that the relations of the two bodies are roughly those of two coördinate houses of one parliament; but this theory is even less tenable than the other. Neither is an "upper" house, and neither a "lower"; in fact, neither is a "house" at all, in the strict sense of the term. In a very few cases coördinate action is required by the Covenant — as for example, in enlarging the membership of the Council, and in proposing amendments to the Covenant. But apart from such cases, the concurrence of neither is required or contemplated by the Covenant.[47] A recent writer succinctly describes them as " simply two councils of different size, one meeting frequently, the other less often; one capable of quicker action, therefore of more value in a crisis, the other likely to be more dilatory in its motions and more calm in its conclusions." [48]

It should be noted, however, that the members of the Council, being also members of the Assembly, can negative action in the Assembly under the unanimity rule, but in doing so they would vote as members of the Assembly, and not as members of the Council. It remains true, in general, that neither body, as such, can constitutionally defeat or control action by the other. Their independent status is shown by the fact, already appearing, that each is given, in identical terms, the broad power to deal with any matter within the sphere of action of the League or affecting the peace of the world, each body being the sole judge of its international rights and obligations.

In point of fact the working relations between the two bodies have become pretty well established, but not without some friction in the earlier years. If the Assembly decides that certain action ought to be taken, it requests the Council to take appropriate steps to that end — as by referring the matter to some technical body for investigation and report, or by other appropriate procedure. This course involves no danger of deadlocks, because the Council will necessarily be in accord with the Assembly in the decisions it reaches; otherwise the members of the Council which are also members of the Assembly would have defeated the action of the latter body. The Assembly does not consider itself a continuing body in the sense that the Council is permanent. It has no standing committees, the six committees above referred to serving only for the Assembly creating them. Thus between its meetings the Assembly has no organization, save as the Council and the Secretariat serve in that capacity; but the Secretariat is more directly the agent of the Council than of the Assembly, ordinarily acting under the immediate authority of the Council, even as to matters in which the Assembly has taken the initiative.

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[47] They must agree in the choice of Judges of the Permanent Court of International Justice, but in that matter they act independently. *Statute of the Court,* Art. 8.

[48] Quigley, *op. cit.,* 22.

Reasons for the Two League Bodies

The League was given the bicameral form of organization chiefly for two reasons: First, to make definite provision for a small, workable body of member states to handle urgent matters as they arise, to act as a council of conciliation in dealing with international disputes, and to take over certain duties of an administrative character which the adjustments of the peace treaty seemed to make necessary. At the same time the covenant-makers realized the necessity of provision for world conferences at frequent stated intervals, after the analogy of the Hague Conferences, to deal with the broader aspects of international relations, and to serve as a clearing house for international public sentiment. Such a body could rest only upon the broadest representative basis; its ends could no more be served by a select group of states than could continuing administrative functions be performed by a large representative body.[49]

The other main reason for the creation of the Council was that some compromise seemed to be necessary between the theoretical equality of states and their practical inequality, if any League whatever was to be organized. The Hague Conferences had demonstrated that the theory of state equality, however sound and necessary it might be if interpreted to mean legal equality, was a serious obstacle to international organization if taken to mean that states should enjoy equal political power, however unequal in area, population, and resources, and in the range of their interests. The facts of international life conflicted with this theory; and to compromise between fact and theory the covenant-makers created two bodies, one frankly recognizing the predominance of certain states, the other doing homage to the theoretical equality of all states.[50]

Future Development of Their Relations

Every legislative body of the bicameral type illustrates the evolutionary forces at work upon all political institutions. The balance between the two branches is always unstable; one tends to gain power and prestige at the expense of the other, even though the constitutional basis of the two remains unchanged. So it has been, and doubtless will continue to be, with the Assembly and the Council. Their precise relations were purposely, and wisely, left undefined, so that their natural development might not be hampered by formal restrictions. Which body will ultimately dominate the League, if their relations should develop into a contest for domination, cannot be predicted. Should the Great Powers, conscious of their relatively greater strength in the Council, undertake to exalt its authority at the expense of the Assembly, they might succeed in transforming the League into a virtual Concert of the pre-war type. On the other hand, if the Assembly, conscious that it speaks for the whole Society of Nations, should undertake to dominate, it might shake the prestige of the Council.

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[49] The Covenant might have left it to a single League body like the Assembly to create standing committees, or a single general commission, to take over the special functions assigned to the Council; but this plan would have afforded no necessary assurance that the requisite machinery would be created or maintained.

[50] Students of American government will not fail to note that the framing of the Constitution of the United States involved a similar compromise between fact and theory in the establishment of the Senate and House of Representatives.

No such contests for supremacy are to be anticipated; the relations of the two bodies are more likely to be fixed ultimately by the steady interplay of forces which neither will consciously undertake to control. The Council may well be content to make its influence felt in the Assembly rather than as opposed to it, while the Assembly will consolidate the position it has already assumed as the policy-forming organ of the League. The increased membership of the Council is taken by some commentators to indicate a sense of the growing importance of the Council and its ultimate rise to a controlling position in the League; [51] This view stresses the greater mobility of the Council, its superior effectiveness in meeting crises, and the freer play of Great-Power influences in its more confidential and intimate deliberations. On the other hand, the enlargement of the Council may be interpreted as a recognition of the importance of placing it on a more broadly representative basis and thus as a tribute to the democratic constitution of the Assembly, and further, as a move to checkmate the influence of the Great Powers in the Council.

Whatever the final result of enlarging the Council, it is safe to say that a resumption by the Great Powers, even within the framework of the League, of their old Concert-of-Powers rôle, would be at the risk of transforming the League from an avowed instrument of justice into a virtual instrument of power. Such a development is not to be anticipated. Precisely because the Assembly, as the great organ of international public opinion, commands the confidence of the peoples of the world, will it in all probability continue to enjoy a prestige denied the Council. In a struggle for supremacy with the Council it would be handicapped, to be sure, by its unwieldiness and its lack of constant touch with international affairs; but the weight of its judgments when delivered, and its appeal to the imagination of the world as the one universal representative of the nations, will be likely to render its position in the League permanently secure.

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[51] Quigley, *op. cit.*, 22–23.

VI. The Secretariat

The administrative work of the League is carried on by the Secretariat, a permanent staff of officials maintained at the seat of the League. Closely associated with the Secretariat proper are a number of technical organizations, advisory committees and commissions, the whole constituting a highly organized and efficient body of administrators and technicians. A brief outline of this intricate and important piece of League machinery must suffice.

The Secretariat has been called the distinctive feature of the League,[52] and undoubtedly it is; but it is unique only in the scope and variety of its functions. It is essentially an enlarged administrative bureau of the type found in the Universal Postal Union and other international administrative organizations discussed in another chapter. The immediate suggestion of such an agency is said to have come from the utility of a group of secretaries organized to assist the Supreme Council during the war.[53]

Covenant Organization and Functions

Provision for the secretarial work of the Assembly and the Council was obviously necessary, but the Secretariat is remarkable in that its functions in performing the clerical work of these bodies have become mere incidents in its far-flung activities. Article VI of the Covenant provides that the permanent Secretariat, comprising a Secretary-General and such secretaries and staff as may be required, shall be established at the seat of the League; that the Secretary-General shall be appointed by the Council with the approval of a majority of the Assembly; that he shall appoint the secretaries and staff with the approval of the Council, and that he shall act in that capacity at all meetings of the Assembly and of the Council. Other provisions of the Covenant impose certain formal duties upon him, chiefly that of arranging for the investigation and consideration of disputes by the Council.[54] Besides, the Secretariat is required to publish treaties registered with it under Article XVIII of the Covenant.

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[52] Harris, *op. cit.*, 29.

[53] *Ibid.*

[54] Art. XV.

These provisions comprise the direct references in the Covenant to the organization and functions of the Secretariat. Nowhere does it appear that the Peace Conference contemplated any such elaborate mechanism as has been developed; indeed, thinking of the League, as many members of the Conference did, primarily as an agency to keep international peace, there would be no need of an extensive secretarial organization. Technically, therefore, it is very largely what would be called in the national sphere an extra-constitutional body. It can easily be justified, however, as being within the general competence of the League, by Article XXIII of the Covenant which, though not mentioning the Secretariat, charged the members of the League with responsibility as regards certain interests — labor conditions, health, traffic in arms and ammunition, equitable conditions of commerce, etc. — which required some kind of specialized agencies for their adequate treatment.

The Secretary-General

At the head of the Secretariat, then, is the Secretary-General. In the so-called Annex to the Covenant Sir Eric Drummond, of Great Britain, was named as the first Secretary-General, and he has held the office ever since.[55] One of his important duties, as already stated, is to appoint the secretaries and staff of the Secretariat, with the approval of the Council. In practice he is given a pretty free hand in the selection of his subordinates, with the understanding that the positions shall be distributed among the member states as impartially as possible, having regard to efficiency. Nor are his appointees limited to member states; citizens of the United States have held important positions in the Secretariat.[56] The members of the Secretariat are not in any sense representatives of the countries from which they come, but servants of the League alone. Officials below the rank of director are appointed for a term of twenty-one years, with provision for the reconsideration of each appointment every seven years; while members of the clerical force are appointed for twenty-eight years, with a like condition as to review. Thus the policy of permanency of tenure has been definitely adopted, as tending to promote efficiency and disinterested service.[57]

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[55] It is commonly acknowledged in League circles that much of the success of the League during its formative years, when the details of organization were being worked out and procedural precedents established, was due to the tact and good judgment of the Secretary-General. See interesting comment on Sir Eric Drummond in Quigley, *op. cit.*, 43.

[56] On this point see *ibid.*, 53.

In a very real sense the Secretary-General is Director of the League. No such rôle is cast upon him by the Covenant, nor does he even ostensibly originate League policy; but so much depends upon him as a coördinating and supervising head, and so effectively may he direct the organization and activities of the Secretariat, that he might be referred to with much propriety as the official head of the League as well as of the Secretariat. An especially important duty of the Secretariat is the preparation of the agenda for the Assembly, and arranging the details of international conferences held under the auspices of the League. In fact, the Secretariat is the main agency in carrying out the plans and decisions of the Council — always, of course, under its direction. The relations between these two bodies are constant and intimate, and their coöperation highly effective.

Internal Organization

Briefly, the organization of the Secretariat is as follows: At its head is the Secretary-General, with three Under-Secretaries to assist him. The body of the Secretariat is divided into eleven sections, the names of which indicate in general their functions: Political, Information, Legal, Administrative Commissions and Minorities, Economic and Financial, Mandates, Communications and Transit, Disarmament, Social Questions, Health, and International Bureaus. Two of these sections — those dealing with political questions and international bureaus — are in charge of Under-Secretaries; the rest are headed by Directors. They differ widely in the number of their personnel, depending upon the scope and character of their work. Internally the Secretariat as a whole is organized into a Division of General Organization or Direction, a Division of Special Organizations, and a Division of Internal Services, mentioned here to indicate how complex a body it has become. The personnel in permanent service in the Secretariat numbers over five hundred, of more than thirty nationalities.[58]

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[57] The whole matter of personnel in the Secretariat is governed by an elaborate set of staff regulations.

[58] For a condensed statement of the organization of the Secretariat, see Potter, *op. cit.*, 308 ff. Quigley, *op. cit.*, 41 ff., outlines it briefly, indicating the general functions of some of the sections. A movement is on foot, now embodied in the report of a committee set up to consider the matter, to reorganize the Secretariat. The plan proposed contemplates the formation of a cabinet, made up of the men in charge of the fourteen departments or sections

The work of the Secretariat may be compared, in a general way, with much of that done in the administrative departments of modern governments. It conducts investigations at the request of the Council, and carries on correspondence and general administrative work, besides performing the formal duties laid upon it by the Covenant. The League issues a large amount of printed matter — official journals of the Assembly, reports of special investigations, documents in aid of such investigations, and the like; and the task of preparing and distributing this material falls to the Secretariat. Further, it does the Secretarial work for the technical organizations affiliated with it, such as the preparation and transmission of questionnaires, arranging for their meetings, and publishing the records of their proceedings.

VII. The Technical Organizations

Associated with the Secretariat are a number of technical organizations, commissions and advisory committees, nine in all, which constitute an important part of the working machinery of the League. They have been created by the Council to aid it in the prosecution of various lines of activity requiring expert advice and assistance. Thus they are closely in touch with the Council, working under its general direction and bringing the highest degree of technical skill to bear upon the solution of problems to which the Council, either on its own motion or by request of the Assembly, directs its attention.

Two of these commissions, the Permanent Advisory Commission on Armaments, and the Mandates Commission, are expressly provided for in the Covenant.[59] Others have been created from time to time, as suggested, to aid the League in the discharge of some of its non-political functions, especially those specified in Article XXIII.[60] One Advisory Committee, that on Intellectual Coöperation, is unre-

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into which the Secretariat will be divided, to advise the Secretary-General. Eight of these departmental heads would have the title of Under-Secretary General, and six would be called Directors. The plan also provides for a Deputy Secretary-General.

[59] Arts. IX and XXII.

[60] These functions relate to the maintenance of fair and humane conditions of labor in all countries to which the relations of the members extend; to securing just treatment of the native inhabitants of territories under their control; to the traffic in women and children, and in opium and other dangerous drugs; to the trade in arms and ammunition; to freedom of transit and communications and equitable treatment for the commerce of all members of the League; and to the prevention and control of disease.

lated to the declared purposes of the League save as it may promote international peace and good will, and more coördinated effort within the general sphere of its activity.[61]

Three great technical organizations have been set up: The Economic and Financial Organization, the Communications and Transit Organization, and the International Health Organization. Each of these organizations is divided, in turn, into committees dealing with special aspects of its general work. For example, the Communications and Transit Organization has permanent committees for Ports and Maritime Navigation, Inland Navigation, Transport by Rail, Electrical Questions, Road Traffic, Legal Questions, and Budget, besides ten or a dozen temporary committees.

Again, to illustrate further the detailed activities of these bodies, the Health Organization has a committee of Health Experts on Infant Welfare, a Joint Commission of Experts for the study of the relationship between public health services and health insurance organizations, a Sub-Commission on Preventive Medicine, sub-committees on the protection of maternity, infancy, and the child of pre-school age, and for the study of occupational cancer and the radiotherapy of cancer, a Small Pox and Vaccination Committee, a Commission of Expert Statisticians, a Commission of Experts for the Study of Tuberculosis and Sleeping-Sickness in Equatorial Africa, an International Sleeping-Sickness Commission, a Malaria Commission, a Commission for the Study of Hygiene and Preventive Medicine, an Opium Commission, and several other commissions on special health subjects.[62] In addition to the Technical Organizations there are five Advisory Committees, dealing respectively with Military, Naval, and Air Questions, Mandates, Opium, Protection and Welfare of Children and Young People,[63] and Intellectual Coöperation.

These technical bodies command the services of the foremost experts and authorities in their respective fields, it being considered a high professional honor to be invited to serve thereon. Some of the most important work done by the League has been carried through by these organizations; it will be discussed in later connections. It should be borne in mind that these auxiliary bodies are not empowered to make final decisions; they investigate and report, sometimes embodying their conclusions in the form of conventions, but the Council assumes all responsibility for final decisions.

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[61] Discussed in Ch. XXVIII.

[62] See Ch. XXVI for discussion of the work of the Health Organization, and Ch. XXIX on the Economic and Financial Organization, and the Communications and Transit Organization.

[63] Subdivided into a committee dealing with the traffic in women and children, and a committee dealing with child welfare.

Organizations for Special Purposes

Finally, the Council sets up, as need arises, temporary committees to handle special subjects — such, for example, as the Committee of Experts for the Progressive Codification of International Law now functioning. Many, perhaps most, of these technical advisory organizations owe their existence to resolutions of the Assembly — a fact worth noting as an evidence of the initiative and directive functions of the Assembly.[64] So also, they indicate the wide scope of the activities of the Secretariat, which serves them in a clerical and fact-gathering capacity through its appropriate sections. It should be noted that the functions of the Secretariat may hereafter be extended into new administrative fields under Article XXIV of the Covenant, which provides:

> There shall be placed under the direction of the League all international bureaus already established by general treaties if the parties to such treaties consent. All such international bureaus and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

Later paragraphs in the same article make it clear that " direction of the League " means practically " direction by the Secretariat," subject, of course, to ultimate League control. Several newly organized international bureaus have thus far been placed under the direction of the League; [65] but new measures of international control naturally fall within the activities of the League itself. So also, the Secretariat is charged with the duty, subject to the consent of the Council and if desired by the parties, of collecting and distributing information for any bureaus or commissions not placed under the control of the League, and of rendering them any other necessary or desirable assistance.

Importance of the Secretariat

It would hardly be too much to say that the Secretariat has done more to justify the creation of the League than either of its other two constituent organs. This statement would refer, however, not to its Covenant powers but to its practical work. Legally it is a dependent body, charged with formal functions and subject to the direction of the Assembly and the Council; practically its activities cover the whole field of international relations, and that in an admirable spirit of detachment and helpfulness.

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[64] For a complete list of the personnel of the Organizations and Commissions of the League, see *Monthly Summary* for January, 1930.

[65] *League Handbook of International Organizations,* 5, which brings the record down to 1926. One or two others have since been organized.

> If international or multinational action, action based on facts and considerations of general international welfare, coöperative action for mutual benefit, are the keynotes of true League action, then it is in the Secretariat that true League spirit is to be found.[66]

A study of the complex structure of the Secretariat, including the bodies affiliated with it, gives one the impression that it may be too highly organized; but this impression will be modified, to say the least, by two or three considerations. First, it deals with infinitely varied matters, matters which ramify widely, which are more or less inter-related, and often delicate. Its field is really the whole realm of international relations. Second, its work demands a high degree of specialization in many fields. One secret of its success, as pointed out in other connections, is to be found in its wise utilization of expert knowledge in its preparatory investigations. To a surprising extent international problems lend themselves to this method of treatment, and the results have demonstrated its wisdom. This necessitates, however, numerous expert advisory bodies of rather inclusive international membership, if the work of exploration is to be thoroughly done. Third, a practical justification for this impressive organization has been that it enlists the interest and coöperation of many persons throughout the world. Its advertising value alone — if the phrase be admissible — has perhaps been worth all the expense involved; for thus the League as a going concern has been brought home to governments, to influential private associations engaged in similar lines of activity, and to men and women distinguished in their special fields in many countries.

Professor Potter, summing up a discriminating study of the Secretariat, concludes that it is the backbone of the League, its most stable, firmly organized, and indispensable branch. Certain it is that the Secretariat is doing an invaluable international service — a service so necessary that it would inevitably be continued by some analogous organization were the present League to go out of existence. Nor is an appraisal of the value of the Secretariat to be confined to its specific administrative work alone. As a by-product of this, so to speak, it effectively promotes international coöperation, and therefore international good will. Its work is an impressive demonstration of the solidarity and interdependence of the modern world. The problems with which it deals are such as can be solved only by international action, and the range and variety of such problems is surprising, as will appear from the briefest review of League activities prosecuted mainly by the Secretariat. Its significance has been summed up by Professor Gilbert Murray in these words:

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[66] Potter, *op. cit.*, 374.

> The *esprit de corps* of the League permanent Secretariat, with a professional interest in the preservation of peace and good will, is a new and important factor in the world's life.[67]

VIII. The League Budget

As to the financial support of the League, the Covenant simply provides that the expenses of the League shall be borne by its members in the proportion decided by the Assembly.[68] The Covenant originally provided that the expenses should be met by the League members in accordance with the plan of apportionment adopted for the Bureau of the Universal Postal Union — that is, by a classification of states and the allocation of a certain number of units of expense to the several states of each class. This scheme having proven unsatisfactory, it was amended out of the Covenant, and the whole matter of apportionment left to the Assembly. Under this authority the Assembly makes an allocation of the annual expenses of the League, by assigning to each state a certain number of units out of a total, for the period 1929–1932, of 986 units. The allocation to the several members varies from a minimum of one unit for eight or ten small states to 105 for Great Britain.[69]

The annual budget of the League for the years 1921–1927 averaged about $4,500,000. Deducting from this total certain amounts carried to a fund called the Working Capital Fund, which was created to provide funds in hand for the various organizations of the League in case of delay by members in the payment of their allotments; and deducting also a building fund that has been accumulated from the excess of the contributions paid by the members, the actual cash expense of maintaining the League has averaged approximately $4,000,000 annually. The Assembly of 1928 increased the budget to something over $5,000,000, of which some $280,000 was set aside for the League building fund.[70] Of the total of this budget for 1929, somewhat over one-half was allotted to the Secretariat and special organizations, a little less than one-third to the International Labor Organization, and approximately $450,000 to the Permanent Court of International Justice.[71]

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[67] *The Problem of Foreign Policy* (1921), 117.

[68] Art. VI.

[69] The unit for 1929 was $5288.86.

The Preparation of the Budget

The budget is prepared in draft by the Secretariat, on the basis of its own estimates and of estimates submitted by the Permanent Court of International Justice and the International Labor Organization. This draft is examined by a supervisory commission appointed by the Council, and by it sent out to the members three months before the meeting of the Assembly. Thus the members are fully advised as to its contents. In the Assembly it is referred to a committee and again thoroughly overhauled, coming before the Assembly for final approval. No national budget is more carefully scrutinized, and probably no national government exercises a more rigid control over its expenditures than does the League of Nations.

Familiar comparisons of the total annual cost of the League with the amounts annually devoted by the several member states to the upkeep of armies and navies, or indeed to any other branch of the public service, indicate that the League is not an expensive institution. Thus, on the basis of the budget for 1929 the unit assessment for several states is a little over $5,000, while the allotment for the largest contributor, Great Britain, is something over $550,000. The budget, it should be noted, covers the expenses of the annual Assembly of the League and of the annual International Labor Conference.

The financial administration of the League is attended with practical difficulties. The national quotas must be appropriated by the several governments, and this often means delayed payments. So also, the League has no means of enforcing collection from a delinquent member, except the extreme recourse of expulsion from the

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[70] The League is in process of erecting a building for the adequate accommodation of the Secretariat, the Council and the Assembly when in session, and the League Library. Mr. John D. Rockefeller, Jr., has donated $2,000,000 for the construction of the library building and its endowment. A building for the International Labor Organization has already been erected.

[71] Denys P. Myers, *Nine Years of the League*, *W. P. F. P.*, Vol. XII, No. 1, 35 ff. The budget for 1930 was fixed by the Tenth Assembly at 28,210,248 gold francs.

League, which obviously could not be invoked except as a last resort. So that, practically, the League must bring moral pressure to bear upon members in arrears on their allotments.[72]

IX. NATURE OF THE LEAGUE

After the foregoing analysis of the structure of the League, the question naturally arises as to the essential character of this new international organization. What is it, in theory? How is it to be classified as a political institution? Or is it so unique in structure and function as to constitute an essentially new type of governmental mechanism?

An adequate answer to these questions must wait upon a detailed study of the League in action — how it functions and what it has accomplished; indeed, a complete and final answer may not be possible at the present time. The League is a new piece of machinery, and in process of development. In the few years since it was set in motion it has come to be something materially unlike the League as conceived by some of its chief architects — not only through the unforeseen extension of the work of the Secretariat and the technical organizations, already noted, but by reason of the interpretation of the vague general phrases of the Covenant, both in practice and by formal declarations of the Assembly and Council. This evolutionary process will continue; every constitutional government goes through it — must, indeed, if it is to endure. However, a brief statement at this time of the views generally held concerning the nature of the League may aid in the interpretation of the data bearing upon the question afforded by a study of its activities.

The question suggested concerns primarily the relations between the League and its member states. Two sharply opposing views have been advanced: One is that the League is of the nature of a super-state or super-government, a corporate political entity having power and jurisdiction independent of and superior to the member states, and impairing, in so far as that jurisdiction extends, the sovereignty of its members.

The Super-State Theory

Dr. David Jayne Hill has been one of the most eminent and logical exponents of this view. He holds that the League, as a distinct corporate entity, exercising a will not identical with that of all the separate members, is organized with power to coerce other states not belonging to it, to act under its own rules and by its own judgment, and even to dictate the form of government and degree of authority to be exercised over wide areas and great populations subjected to its control.[73]

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[72] For a detailed explanation of the method of handling League finances, see *Information Pamphlet* published by the League (edition revised as of Jan., 1928), entitled *Financial Administration and Apportionment of Expenses.* See also Howard-Ellis, *op. cit.*, Ch. XI.

From this point of view the League is not a federation, in which the component states are combined into a new political organism, but an autonomous corporation, endowed with its own organs of action — in effect a super-government. Some of the language of the Covenant, taken literally and divorced from the fundamental theory of the League, lends color to this interpretation. Two of the League prerogatives cited by Dr. Hill in support of his thesis may be referred to by way of illustration. In literal terms the League has power to coerce a state not a member into acceptance of the obligations of the Covenant as regards a pending dispute; [74] but " League " in this connection means, in practical effect, the members of the League, each acting as may seem to it expedient in the situation presented. The League as a " corporate entity " can bring no more coercion to bear upon a recalcitrant state than its members are willing to exert in its behalf; it simply affords a method and a mechanism for their voluntary coöperative action.

Again, the League technically has control over the " wide areas and great populations " embraced in the class B and C mandates; [75] but here also authority may be exercised, not by the League as an organ of government but by the several members acting in voluntary concert through the machinery of the League. If this theory of League action were not obvious on the face of the Covenant, interpretations placed upon it from time to time by the League itself have tended strongly and steadily to establish it. For example, the interpretation given the provisions of the Covenant relative to sanctions against a covenant-breaking state, later discussed,[76] clearly goes upon the theory that a member state cannot be coerced into the support of punitive measures against the wrong-doer, but may determine its policy in its own way. So also Article X, often cited in support of the theory of a super-government, has been interpreted in a similar sense,[77] and other illustrations of the same tendency might be cited.

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[73] *Present Problems in Foreign Policy* (1919), 109 ff., in Chapter entitled "The Corporate Character of The League of Nations."

[74] *Covenant*, Art. XVII.

[75] See Ch. XXIII.

[76] See Ch. XXX.

[77] See Ch. V.

The Association-of-States Theory

The other view is that the League is in no sense a super-state, but rather a partnership or association of states, existing to promote the common interests of its members; and that this it does, and can do, not by coercive measures but by friendly council and coöperation. According to this view the sovereignty of a state is not impaired by assuming membership in the League, because the obligations incident to membership are voluntarily assumed, and may be voluntarily renounced by withdrawal. This view has been ably championed by Professor Gilbert Murray, among others. Arguing that the League is very far removed from a super-state, he says:

> There are, properly speaking, only two broad obligations binding on the members of the League: First, not to make war about any dispute until they have tried, with the help of the other members, to settle it peacefully; and second, to have regular and frequent conferences. The whole strength of the League lies in the machinery for constant conference and discussion.[78]

As a matter of fact the super-state theory was not that of the statesmen who founded the League. At the first meeting of the Council Lord Curzon said:

> It has sometimes been said that the League of Nations implies the establishment of a Super-State or a Super-Sovereignty. The very title "League of Nations" should be sufficient to dispel this misconception. The League does not interfere with nationality. It is upon the fact of nationality that it rests. The League is an association of sovereign nations whose purpose is to reconcile divergent interests and to promote international coöperation in questions which affect, or may affect, the world at large.[79]

This conception of the League held by its organizers has gained general acceptance. A bare reference to some of the essential attributes of a state serves to demonstrate how far the League is from statehood. A state must have territory; the League has none. A state must enjoy sovereign power over its citizens or subjects; the League has neither sovereignty nor subjects. A state commands armed forces; the League has "no power to move a single soldier

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[78] Introduction to F. N. Keen's *Towards International Justice* (1923), 9–10.

[79] Quoted by Hamilton Holt, 96 *Annals Am. Acad.* (1921), 2.

. . . without the consent of the nations concerned." [80] A state enjoys plenary legislative power, any limitations thereon being self-imposed; the League has no power of legislation, but only the power to initiate legislation which becomes effective solely through the independent action of the member states. A state may tax compulsorily for its own support; the League has no taxing power, but only that of making requisitions which it cannot enforce.

Lack of Coercive Power over Members

It is highly indicative of the character of the League that it has no constitutional power either to coerce a state into membership or to question the withdrawal from membership of a state which has performed its international obligations under the Covenant. This shows that it is not a federal union in any substantial sense, and that it does not aim at establishing a super-national government.[81] A union or confederation from which a constituent state could by express constitutional provision withdraw at will, without the slightest breach of constitutional obligation, would be a highly attenuated type of state, to say the least; it could be no more than a "concert of independent powers." [82] Again, it would seem quite inappropriate to attribute real super-governmental power to an organization of states whose determinations could be negatived by any member state.

Garner points out [83] that the League possesses certain of the attributes of a state — a constitution, agencies to expedite its purposes, a permanent seat or capital, a treasury and a budget, property, officials who enjoy diplomatic privileges, and the like. He suggests that it may be a state in the making, a rudimentary form of confederation which by reason of its inadequacy for certain essential purposes will ultimately develop into a true state. This may be true, but most of the indicia of statehood mentioned might equally well be predicated of the domestic corporation or co-partnership. The League doubtless has a "real juridical personality," a corporate existence within limits, but it also has some of the characteristics of the co-partnership, if one were seeking an analogy under domestic law. For example, the property of the League — its working capital fund, its building fund, and its property in land and buildings — seems to be held, not as the property of a corporation but as belonging in definitely ascertained shares to the member states.[84]

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[80] Arthur Sweetser in 96 *Annals Am. Acad.*, 21 at p. 29 (1921).

[81] Pollock, *op. cit.*, 97.

[82] *Ibid.*

[83] *Recent Developments in International Law* (1925), 619–620.

[84] See H. B. Ames, "What is the League of Nations," 22 *Am. Pol. Sci.*

But taking a broader view of the League, it is clear that the member state's right of withdrawal at will, of refusing to be bound by "corporate" acts save as to certain unessential procedural matters, of determining its own policy with respect to those formally announced by the Assembly or Council, is incompatible with the theory of a super-state, or of a super-government in any real sense.

What, then, is the League? It has been defined by a recent writer in rather formal terms as follows:

> The League of Nations is an association of states that have accepted certain international obligations with the object of preserving peace and have undertaken to coöperate in matters of international concern by their signature of the Covenant of the League.[85]

A Mechanism for International Coöperation

But what is the nature of this association of states? How shall it be characterized, in view of the acceptance of these obligations and undertakings under the Covenant? Is it a quasi-state, or a mere piece of mechanism to facilitate international coöperation? The tendency of thought on these questions is undoubtedly expressed by Professor Hudson, who denies that it is a new political entity or has a definite political personality, holding rather that it is "merely a device by which certain nations have undertaken to coöperate in their efforts to solve some of the problems which they have in common." [86] It is a method of collaboration.

From this point of view, as Professor Hudson intimates, there is no real propriety in giving credit to the League, as a political entity, for policies carried through to success, or conversely, in blaming the League for failures. Success or failure lies at the door of the governments which, by their willingness or unwillingness to coöperate, are responsible for the results attained. "The League," says Howard-Ellis, "from one point of view is simply a group of states which have pledged themselves to apply the method of diplomacy by conference." [87] And in doing this the League acts, "not on its own initiative but on that of its members; it comes to decisions not out of some detached, super-judgment of its own, but through the free consent of the nations in it; it acts, or fails to act, as its members see fit." [88]

Rev., 706 (1928). For the view that the League is a corporation, not a super-state, see Dayton Voorhees in 20 *Am. Pol. Sci. Rev.*, 847 ff. (1926).

[85] Quigley, *op. cit.*, 21.

[86] *Current International Co-operation* (1927), 35–36.

[87] *Op. cit.*, 451.

[88] Sweetser, *article cited*, p. 29.

The League is a " composite association which must take into account the wishes and interests of all its members; its business is to discover and to explore such common ground as exists; it has no power to impose a collective will, but only opportunities to elicit general consent; in short it provides, not a form of government, but a method of coöperation." [89]

Another writer states the theory of the League as follows:

> The League of Nations is nothing more nor less than the nations of the League. In other words the League of Nations is an association of fifty-two states, which, while maintaining their sovereignty unimpaired, have signed a treaty, called the Covenant, pledging themselves (1) to submit their disputes to peaceful settlement and to take joint action against any power infringing this fundamental obligation, and (2) to co-operate positively over a series of non-political questions, such as questions of public health, economic and financial matters, transit and communications.[90]

> The real government of the League [Dr. William E. Rappard says] is not in Geneva, except during the sessions of the Council and of the Assembly, and even then only in part. The League in reality is governed, not from its seat, but from and by the ministries and parliaments of the states members of the League.[91]

An examination of the Covenant, in the light of the interpretations placed upon it in practice, confirms these views. As Howard-Ellis remarks, the functions of the Council and Assembly, in the main, are to record, not to order, action — to advise, not to coerce. They can do nothing in derogation of the sovereignty of a member state. At the most they can, by unanimous action, voluntarily backed up by the governments of the member states, compel a member to desist from war, but the exercise of this power is not an impairment of the sovereignty of the member state, because it has voluntarily assented thereto in assuming membership in the League.

This interpretation of the League, which it seems necessary to emphasize in view of the conflicting theories regarding it so widely held, is strongly supported by the provisions of the Covenant with respect to voting. As already pointed out, decisions at the meetings of the Assembly and Council can be taken only by agreement of all the members of the League there represented, except as otherwise expressly provided in the Covenant. It is otherwise provided with respect to procedural matters, which may be decided by majority vote, and as to the exercise of a number of other powers, such as the election of non-permanent members of the Council and of new members of the League, and the adoption of amendments to the Covenant.[92] But the general rule is that of unanimity — a rule quite inconsistent with the theory that the League is a super-government in any real sense.

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[89] *League Information Pamphlet on Economic and Financial Organization* (Rev. Ed., 1928), 8.

[90] Roth Williams, *The League of Nations Today* (1923), Ch. II.

[91] *International Relations Viewed from Geneva* (1925), 161.

A League of States, not of Peoples

Finally, as already stated, the League is not a league of peoples but a league of states. It functions through the governments of its member states; it cannot function otherwise. It may be argued that it would stand more completely for the ideal of international unity if it were a League of Nations in the more popular sense — what one writer has called a "league of national souls"; [93] but it is difficult to see how such a league could function without a complete overhauling and readjustment of the machinery of international intercourse. A "league of governments" may fall far short of the ideal structure of a League of Nations, for the reason, suggested by the writer cited above, that the governments themselves are sadly in need of better government. This criticism is valid; the League is a very imperfect embodiment of its avowed ideals; but its architects were too wise to lose sight of realities in the pursuit of ideals. They took national government and politics as they found them, without undertaking the revolutionary and futile task of remaking them to fit into an ideal scheme of international government.

It is essential to a correct understanding of the League to realize that it embodies no novel principles of international government. The conference plan of international action, which is that of the Assembly and Council, has characterized international life ever since the rise of the system of national states, was resorted to with increasing frequency throughout the nineteenth century, and culminated in the great Hague Conferences of 1899 and 1907. The conception of an international executive or supervising body to deal with questions of general international interest was precisely that of the nineteenth century Concert of Powers, the League Council merely regularizing and making permanent the organization of the executive group; while the Secretariat is but a generalized form of the familiar international administrative bureau. International legislation on the initiative of a congress or conference of states has been familiar to students of international affairs since the Congress of Vienna in 1815, and has been repeatedly exemplified during the intervening century. As to the League methods of dealing with international disputes — arbitration by agreement of the parties, and failing such an agreement, conciliation by the Council — both have been commonplaces of international politics for many years. The Covenant merely carries the principle of compulsory resort to peaceful methods of settlement a step further than general practice had gone before the war.

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[92] But as to amendments, they do not bind a member which dissents therefrom; in that case it ceases to be a member. For an enumeration of the class of cases in which the Assembly and Council may depart from the unanimity rule see R. L. Buell, *International Relations* (Rev. Ed., 1929), 718 and note.

[93] L. P. Jacks, "A League of Nations or A League of Governments," 131 *Atlantic Monthly* (1923), 161.

Thus the organization of the League was in the main a systematic coördination of the methods of international coöperation that had been growing up before the War. What is new is the universal realization of the need of unity, both ideally and practically; and thus the earlier sporadic attempts to organize the world internationally, successful within limited fields, have been combined, modernized, and expanded into a permanent system.[94]

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[94] Howard-Ellis, *op. cit.,* 60; Hudson, *op. cit.,* 30–31. On the League as it was meant to be and as it actually is, in point of its essential functions, see W. E. Rappard, "The League of Nations as an Historical Fact," *The Problems of Peace* (Lectures delivered at the Geneva Institute of International Relations, 1926), Ch. II.

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CHAPTER XXII

LEGISLATIVE WORK OF THE LEAGUE

I. THE PROBLEM OF INTERNATIONAL LAW-MAKING

In Chapters XIV and XV the methods and results of international legislative action prior to the War were outlined, and the inadequacies of this function of international government pointed out. To recapitulate briefly: It appeared that international law had come into existence chiefly by force of the slow crystallization of custom into more or less uniform and generally recognized rules of international practice, the process being analogous to the growth of the customary or common law of England. But as modern international life became more complex and intimate, with the growth of communication and the multiplying contacts and increasing interdependence of nations, this process tended to lag behind the needs of the new era. Custom hardens into law slowly at best; it cannot readily and quickly adjust itself to new conditions; like the common law it must needs be amplified and supplemented by international action of a true legislative character.

Nineteenth Century Conferences

Thus, in recognition of this need of new sources of law, the nineteenth century was characterized by an increasing number of conferences, culminating in the great Hague Conference of 1899, dealing in a legislative way with matters of common concern to the nations. By this means a substantial body of international legislation was added to the customary law of nations,[1] and various administrative bodies were set up, with supplementary power of legislation within restricted fields. This movement constituted a long step forward; but, as pointed out in Chapter XV, it left much to be desired as a source of international legislation. The conference procedure lacked continuity, for one thing; conferences were episodes in the relations of nations, not a systematic part of their organization. Each conference stood unrelated, organically, to any other, past or future, so that it could not enjoy the full benefits of accumulated experience, or look ahead with confidence to the completion or betterment of its work by any future conference.

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[1] For references to the more important pre-war statutes see Ch. XV. The legislative work of the International Labor Organization is referred to in Ch. XXXV, Sub. IV.

Moreover, these legislative conferences were greatly hampered by the lack of facilities for thorough preparation of their work; no common fact-finding agencies existed, nor did they have the benefit of regular periodical exchanges of views as between governments, on controverted points of policy. And finally, they were not supplemented by any international agencies whose function it was to promote the favorable consideration of their work by the governments represented. Thus there came to be recognized the need of more systematic and scientific methods of securing international action on matters of common interest. It was significant that the Second Hague Conference of 1907 recommended the calling of a third conference after an interval of eight years, and went on record as favoring a preliminary committee "charged by the governments, about two years before the probable date of the meeting, with the duty of collecting the various propositions to be brought before the conference, to seek out the matters susceptible of an early international settlement, and to prepare a program which the governments should determine upon early enough to permit of its being thoroughly examined in each country." This action foreshadowed the methods regularly adopted by the League of Nations in the legislative work done under its auspices.

Inadequacy of International Law Recognized

Further impetus was given to the movement for a better international legislative organization by the proposals, at the Second Hague Conference, of an international Court of Justice and an international Prize Court.[2] One of the avowed grounds of opposition to the establishment of these permanent courts was the uncertain state of the law of nations, and the restricted field covered by existing customary law. It was seen that the successful exercise of the judicial function presupposes a body of law settled and comprehensive enough to afford a substantial basis for adjudication. This definitely appeared, as to the International Prize Court, from the fact that it was opposed because of the confused state of some parts of the law of maritime war — a condition which the naval powers sought to remedy by holding the London Naval Conference of 1909.

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[2] *Ante* Ch. XVIII.

International law emerged from the World War somewhat widely discredited. Especially had it suffered in popular esteem during the conflict because of the apparent impunity with which some of its established rules had been flouted by the belligerents. The world at large was skeptical of a system of law that had exhibited such obvious weakness when put to the test; indeed it was openly asserted, even in high places, that the world confronted the task of rebuilding the structure of international law from its foundations.[3] With the close of the War, however, a more optimistic sentiment prevailed. It was seen that while international government had been no match for the disruptive forces which culminated in a War of the Nations, still not only were its legal foundations unshaken, but the superstructure was substantially intact.[4]

However, looking to the future, international law faced two major problems: One the enlargement of the code to embrace a sphere of regulation more nearly coterminous with the relationships of modern states; the other, no less grave and more immediately pressing, the organization of international force behind this enlarging body of law. It was to serve both these ends, the latter more explicitly than the former, that the Peace Conference incorporated into its treaties an international statute of fundamental importance — the Covenant of the League of Nations; and to promote international legislative regulation of the relations between employer and employee, the constitution of the International Labor Organization was also embodied in the treaties.

International Conferences Since the World War

The period since the World War has been pre-eminently one of international conferences. The Peace Conference of 1919 was followed, during the ensuing two years, by a series of allied conferences, sometimes called "Continuation Conferences," dealing with post-war problems.[5] As soon as the League was organized it began to sponsor another series of conferences broadly international in character, among them the great conferences on Communications and Transit, held at Barcelona in 1921 and at Geneva in 1923, the Financial Conference at Brussels in 1920, the Economic Conference at Genoa in 1927, and the Opium Conferences at Geneva in 1924 and 1925. In fact, all the international statutes formulated under the auspices of the League have been signed at conferences called for the purpose.

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[3] See, for example, address of E. M. Borchard before the Am. Soc. of Int. Law in 1923, on "The Resurrection of International Law," *Proc. 61* ff.; Charles E. Hughes, "The Future of Internation Law," Address at the Long Beach Conference on the Foreign Relations of the United States (1917) in Vol. VII *Proc. Acad. of Polit. Sci.,* pp. 3 ff.; Elihu Root, Presidential Address before the Am. Soc. of Int. Law, in 1915, on "The Outlook for International Law," *Proc.* pp. 2 ff.

[4] See J. W. Garner, *Recent Developments in International Law* (1925), Lecture XV.

[5] For a list of a number of these conferences, and a discussion of their work, see *British Survey of International Affairs for 1920–1923,* pp. 5 ff. See also H. A. Gibbons, *Introduction to World Politics* (1922), Ch. XLVIII.

Moreover, independently of the League, numerous important international conferences have been held since the War. Among them may be mentioned the Aircraft and Radio Conference at London in 1923, the International Telegraphic Conference at Paris in 1925, the Radiotelegraphic Conference at Washington in 1927, and a series of conferences on private international law, the sixth of which was held in January, 1928. Mention may also be made in this connection of the important conference on the codification of international law, lately held at The Hague, the first of its kind ever undertaken. It is discussed below.

So also, three important naval conferences have been held: The Washington Conference of 1921–1922, the Geneva Three-Power Conference of 1927, and the Five-Power Conference of London, in the early months of 1930 — all discussed in some detail in Chapter XXXI. In early prospect, also, is a general Arms Conference for which a vast amount of preparatory work has been done. More restricted in scope, but of great international importance, have been the unofficial meetings of the Institute of Pacific Relations, attended by delegates from the countries in the Pacific area, to consider their common problems, the third of which was held in 1929.[6]

II. League Legislative Procedure — Results

A new era on the legislative side of international government opened up with the creation of the League of Nations and the International Labor Organization. As was stated in the Council, referring to the movement for codification initiated by the Assembly: "The establishment of the League and the Labor Organization has in fact created a new and powerful machinery which . . . renders enormous service towards rapidly meeting the legislative needs of international relations."

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[6] On this conference see G. H. Blakeslee, "The Kyoto Conference of the Nations of the Pacific," *Current History,* Vol. XXXI, 723 (1930). Mention should be made of the conferences — limited in point of membership but of immense international importance — which formulated the Dawes and Young Reparations Plans, and the Hague Conference of 1929, whose business it was to settle certain details of the Young Plan so as to make it ready for acceptance by the governments concerned.

The Labor Organization was explicitly charged with legislative functions, its annual conferences being nothing more nor less than deliberative assemblies concerned with the proposal of international legislative measures regulating the relations of the employer and employee classes. The League of Nations, as outlined in the Covenant, was not so obviously dedicated to legislative work; its founders looked upon it rather as an immediate instrument of peace. But peace depends upon the practical recognition of law as the basis of international life — in the language of the preamble of the Covenant, upon " the firm establishment of the understandings of international law as the actual rule of conduct among governments." It follows that the domain of law must be gradually extended if peace is to be better guaranteed — must be projected out into areas of international friction, and made more nearly coterminous with the mutual interests and relationships of the nations.

All this is in the Covenant by implication; but it was urged against the League when the Covenant was under discussion that there should have been provision for periodical conferences of a strictly legislative character, so that the development of international law would be one of the specific interests of the League. Especially was this thought to be necessary in view of the organization of the Permanent Court of International Justice, for which provision was made in the Covenant. However this may have been, in fact the annual Assemblies and the quarterly meetings of the Council afford means of setting legislative agencies in motion which have made notable additions to international legislation. These meetings supply the great need felt before the war for regularly recurring opportunities to discuss international problems; and especially do they better the pre-war legislative process in that they have behind them permanent machinery — the Secretariat and the technical organizations — as investigating and formulating agencies, affording them continuous contacts with the governments, and a scientific approach to legislative problems.

Conventions How Formulated by the League

In brief, the League exercises its legislative functions as follows: The initiative may be taken either in the Council or in the Assembly; if in the latter, it will take the form of a request, or a suggestion, or a recommendation, to the Council that it set in motion an investigation of the subject proposed. Thereupon the Council, pursuant to such request or recommendation — or of its own motion, as the case may be — charges the Secretariat, or the appropriate technical commission, or perhaps a special body of experts, or possibly all three of these agencies, with the task of making a thorough, scientific, impartial study of the subject in hand. As the result of this preliminary study, in the course of which the various governments may be given an opportunity to express their views on controversial points, a draft convention will be prepared by the experts and transmitted to the several governments. Finally, if there seems likelihood of agreement on the essential principles of the proposed statute, an international conference will be called to consider the work of the experts, and the results of its deliberations are embodied in a final convention which goes out to the member states for ratification.[7]

The superiority of this method over the pre-war conference is too obvious for comment. It is still hampered, of course, by the rule of unanimity in the League bodies and in the conferences, and by the difficulty of reconciling divergent points of view on the part of governments; but it does ensure the opportunity, at frequent fixed intervals, to initiate legislative proposals as the need arises, and impartial expert study of such proposals. That it is a legislative organization comparable with that of the member states themselves would be saying altogether too much for it; but that it registers a long step in advance of pre-war methods is shown by its accomplishments.

The result has been that the past eight years have seen a great quickening of the legislative process in international affairs. Special conferences have been more frequent, and the number of multipartite treaties has increased rapidly. No previous period in the world's history has made such a large addition to international law. We seem now to be developing a habit and a tradition of conference which will serve the needs of future legislation.[8]

The more important of these multilateral treaties and conventions are referred to in other connections.[9] Some of these international acts are already in force; others have not yet received a sufficient number of ratifications or accessions to become effective.[10] The significance of this renewed international legislative activity is too obvious for comment. In concrete results it is impressive, but even more striking is it as a manifestation of the new spirit of international coöperation.

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[7] It should be noted that participation in legislative activities of this kind is not confined to member states. On important subjects, such as the limitation of armaments, the opium traffic, and the private manufacture of and traffic in arms and munitions, non-member states like the United States and Russia are invited to coöperate and often do so.

[8] Manley O. Hudson, "The Development of International Law Since the War," 22 *A. J.*, 341 (1928).

[9] In Ch. XXVII on the Social and Humanitarian Work of the League,

III. Progressive Codification of International Law

Hand in hand with this distinctive legislative development has gone another, of similar nature and hardly less important — that of the progressive codification of international law. To go into this subject fully would be to discuss the various technical problems of international law involved in the work of codification, a field outside the scope of this study; a brief outline of this undertaking — its genesis, scope and methods of procedure — must suffice.

A great, comprehensive code of law covering the whole field of international relations has long been the dream of internationalists. Writers like Bluntschli, Bentham, and Fiore have from time to time drafted such code-manuals; while in 1873 an American jurist, David Dudley Field, prepared Outlines of an International Code, which met with considerable favor in scientific circles.[11] These projects are now largely of historical interest only. Serious students of international law do not envisage a universal code as a practical proposition, however desirable it might be. The difficulties in the way of such a consummation are seen to be insuperable in the present state of the law and of international sentiment. Too many questions are debatable; in certain fields international law is too much involved in conflicting national policies, to admit of any hope of early agreement upon a comprehensive body of rules.

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and in Ch. XXIX on League Activities in the Field of Economics, Finance, and International Communications. Two important conventions not mentioned in these chapters are the Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, and the Convention or Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, and Other Gases and of Bacteriological Methods of Warfare, both signed at Geneva in June, 1925.

[10] The status of the International agreements and conventions concluded under the auspices of the League of Nations is shown in lists issued from time to time by the Secretary-General of the League, the last one appearing in connection with the eleventh (1930) session of the Assembly.

[11] Senator Borah's somewhat recent scheme to outlaw war contemplated a comprehensive code of international law backed up by an international court. See R. L. Buell, *International Relations* (Rev. Ed., 1929), 656.

Recognized Need of Codification

But the desirability, and the feasibility, of codification on a less ambitious scale, and within restricted fields where the law is better settled, have been felt for some time. To reduce even limited groups of rules to system and certainty is a gain for international jurisprudence, for by so much is the area of international controversy narrowed, and the rule of established law correspondingly enlarged. Precedents for partial codification had been set before the War. International Conferences like that of Brussels, in 1874, had undertaken to deal with the laws of war, either in a comprehensive way or on specific points; while the Hague Peace Conferences had promulgated, not only a convention regulating the laws and customs of land warfare, but fragments of a code on maritime warfare.[12] So also, the London Naval Conference of 1909 had drawn up a code of maritime law of great authority, notwithstanding its failure of acceptance by the naval powers.

The establishment of the Permanent Court of International Justice seemed to emphasize the need of codification. The committee of jurists which drafted the Statute of the Permanent Court recommended the holding of a codification conference to examine the state of international law as affected by the War, with a view to the consideration of changes suggested by the conduct of the War. The League, however, did not deem the time ripe for such an undertaking, and its position was sustained by the Committee of Jurists on the Progressive Codification of International Law.

In fact, some writers feel that altogether too much time has been devoted heretofore to what Professor Garner terms " the formulation of rules as to how the general killing should be carried on, and the instruments which may be employed in doing it," and too little to the formulation of the rules governing normal and peaceful relations.[13] Moreover, the publicists were not entirely agreed as to the advisability of attempting to codify international law at all, in the present state of its development. This was the position taken by some English authorities.[14] It was a moot question, also, whether the development of international law, recognized by all as necessary, should be taken in hand as a process of formal codification, through conferences or commissions of jurists, or be left to the action of an international court of adequate jurisdiction, whose judgments, serving as precedents, would in course of time build up a body of case law analogous to that of England and the United States.

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[12] George W. Wickersham, " Codification of International Law," 4 *Foreign Affairs* (1926), 237. Mr. Wickersham points out that a step in this direction was taken in the Washington Arms Conference, in the adoption of conventions relating to the use of submarines and gases.

[13] Address before the Am. Soc. of Int. Law, " The Function and Scope of Codification in International Law." *Proc. for 1926,* p. 27 ff.

[14] See editorial by Professor Garner in 19 *A. J.*, 327 (1925).

On the whole, however, the view prevailed that codification afforded the more promising principle of growth, and that the establishment of an international court rather accentuated than diminished the need of codification, for two or three reasons: First, the method of development by way of judicial precedent would be at best unduly slow — certainly unless the proposed court should enjoy a wider jurisdiction than the member states were disposed to accord such a tribunal. Second, the very uncertainty as to the law would deter states from resorting to the court, or at least from binding themselves to do so; and third, unless the court were to be given essentially legislative powers it could not, on the basis of precedents, extend international law over subjects not yet, or inadequately, covered by its rules.

Meaning of Codification — Two Views

Not only have the necessity and the method of codification been more or less controversial subjects, but the publicists have not been quite agreed as to what is meant by codification. Is it to be taken in its ordinary sense, as the presentation, in systematic form, of the law on the subject in hand — reducing to order existing rules, with a view to their better understanding and their more uniform application? Or should codification go beyond this process of restatement, and undertake to adapt existing rules to new conditions by changing and supplementing them as need may appear? From both points of view the process is legislative, strictly speaking. To formulate and codify a mass of fugitive rules, thereby reconciling conflicting interpretations and promoting their general acceptance in standard form, is a true legislative function, and one of the utmost importance to international government. But should the proposed codification of international law be confined to mere restatement, or should it, on the contrary, undertake to reach agreement, not only on what the law is in the fields selected for treatment, but on what it should be therein on certain points which, in the judgment of the codifiers, ought to be subject to legal regulation? The latter process would be legislative in the strictest sense of the term.

The argument for the broader view, in brief, is that international law has notoriously lagged behind the development of international relations, and has thus become inadequate to serve the purposes of the new international order; that an expanding society demands an expanding law; and that just as it has been found necessary to adjust the old common law to new and changing conditions by legislative action, so the customary law of nations must be adapted to a society that has outgrown its restricted precepts.[15] The other view, in a word, is that codification proper does not mean legislation in the full sense, but a mere formulation of existing law; that the test of what should be included in the proposed code, or codes, is not what ought to be accepted by the nations as the law on the subject in hand, but what they have actually accepted as such; and that it may well be doubted whether the time has arrived for an undertaking so ambitious as that of international legislation by codification.[16]

Professor Garner maintains that it is codification in the broader sense that the League should undertake. " What public opinion demands," he says in the editorial above cited, " and what most American jurists who advocate codification want, is the rehabilitation, re-adaptation and extension of the law. They demand that the existing rules be altered, where alteration is desirable, to bring them into relation with the changed conditions of international society, and above all, they want new rules covering international relationships which are not now regulated or only inadequately regulated."

The view that codification should go beyond the formal process of restatement and undertake to widen the sphere of international law by amplifying its rules to meet new conditions is theoretically sound; but it is fairly debatable whether the nations are as yet sufficiently in accord on questions lying outside the present sphere of the law to agree on any considerable extension of that sphere through a comprehensive scheme of codification. It may well prove difficult enough, for the present, to reconcile divergent views within the present framework of the law, without complicating the situation by raising too many new questions. Of course the ideal of an ampler code must not be lost sight of; but the approach to it, judging from past experience, will be through modest beginnings in dealing with restricted subjects, the success of which will be an incentive to undertake more ambitious schemes of enlargement and adaptation. As Mr. G. W. Wickersham, a member of the Commission on Codification, points out in the article cited above, the work of codification, even in the strict sense, is one of enormous difficulty, bound to be the task of many years.[17] Each state will study all proposals in the light of its jurisprudence, its policies, its experience, and its prejudices.

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[15] For a statement of this point of view see address by Professor J. W. Garner, *cited above;* also editorial comment by the same writer in 19 *A. J.*, 327. Mr. Elihu Root takes the same view. See his article on " The Codification of International Law," 19 *A. J.*, 675 (1925).

[16] See *Proceedings, cited above, passim,* for addresses on various aspects of codification, and round table discussions of the general subject.

Preparatory Work of the League

The scope and methods of the work of codification undertaken by the League will appear from a brief summary of what has been done to date. The Fifth Assembly, in 1924, definitely inaugurated the movement by providing for a committee of experts, to be appointed by the Council,[18] to make a preliminary survey of the field of international law, and to report to the Assembly. It consisted of sixteen members from as many countries, all men of distinction as international jurists. They acted independently, not as representatives of their respective countries. This committee was charged with three functions: (1) To prepare a provisional list of the subjects of international law, the regulation of which by international agreement would seem to be most desirable and realizable at the present moment: (2) to communicate the list to the Secretariat of the League, refer it to the governments of the various states, members and non-members of the League, and examine the replies received; and (3) "to report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution."

This committee held several meetings, at which provisional lists of subjects "the regulation of which by international agreement would seem to be most desirable and realizable at the present moment," were presented and discussed. In all more than a score of topics were so considered. The net result of its labors was the selection of seven subjects which it deemed "sufficiently ripe" for consideration at an international conference. These subjects were covered by a questionnaire sent out to the governments of some fifty nations, both members and non-members of the League, among the latter the United States, and replies were received from more than thirty governments.[19] Of the seven subjects upon which the questionnaire was based, three were selected by the Eighth Assembly of 1927 for consideration at an international codification conference — namely, territorial waters, nationality, and the responsibility of states in respect to injury caused in their territory to the persons or property of foreigners.

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[17] He cites by way of illustration what he calls the herculean task undertaken by the American Law Institute in presenting the laws of the American states on various topics in accurate, orderly, and systematic form. On this point see address by Charles E. Hughes as President of the Am. Soc. of Int. Law, 1928, *Proc.*, 8 ff.

[18] Known as the Committee of Experts for the Progressive Codification of International Law.

Results of the First Codification Conference

The First Codification Conference was held at The Hague in March-April, 1930, forty-seven countries being represented. Its results may be summarized as follows: As to the responsibility of states, the committee dealing with this subject was unable to reach any conclusions, and therefore made no report to the conference. On the delicate subject of nationality, agreement was reached on certain points which were covered by a convention, three protocols and eight recommendations. The convention of thirty-one articles deals with general principles relating to nationality, and certain specific questions such as the nationality of married women and children. Of the protocols, which are independent of the convention and may be separately adopted, two deal with statelessness or absence of nationality, in certain important aspects, and the third is designed " to determine, in certain cases, the position as regards their military obligations, of persons possessing two or more nationalities." The recommendations relate to such phases of the subject as the regulation of statelessness in general and of the problem of dual nationality, the introduction into the laws of the various states of sex equality in the matter of nationality, and proof of nationality.

As to territorial waters — or rather, the territorial sea as it was termed in the conference — two general principles were unanimously agreed to: freedom of navigation and the sovereignty of coastal states over a belt of sea around their coasts. The conference failed to agree on a rule fixing the breadth of this belt, and only provisionally agreed to a convention on the legal status of the territorial sea defining and regulating the right of passage of warships and other vessels. Finally, the conference adopted two recommendations — one on the legal status of foreign vessels in inland waters, the other relating to the protection of fisheries. It also went on record as favoring continued effort to codify the law on the subject of the territorial sea.[20] The resolution of the Assembly providing for the codification committee of jurists indicated that it should consult " the most authoritative organizations which have devoted themselves to the study of international law." This the committee did, among the organizations whose coöperation was requested being the American Society of International Law.[21] Thus it appears that the League has followed its regular procedure in the matter of codification — the selecting of a body of experts for preliminary work, securing the advice and criticism of the several governments by means of questionnaires, and as a final step, the calling of an international conference to act upon definite proposals. Especially necessary is it, in matters involving so much technical detail, that thorough preparatory work be done. Experience with international conferences has shown that the work of preparation — the selection of subjects, the formulation of proposals, and the like — should be entrusted to a relatively small group. Conferences are too large and unwieldy, too prone to unprofitable discussion, and too unfamiliar with details, to do much more than pass upon work already prepared for them. In this respect the procedure adopted by the League is wise; indeed, it is analogous to that of the committee system in national legislatures.

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[19] For the reply of the government of the United States, and a review of the work of the committee, see article by Professor Jesse B. Reeves, 21 *A. J.*, 659 (Oct., 1927).

Scope and Technique of the League Movement

It is indicative of the purpose of the League to undertake to make its work rather more than one of strict codification, that the Eighth Assembly declared that codification should not be confined " to the mere registration of the existing rules, but should aim at adapting them, as far as possible, to contemporary conditions of international life "; and that some system should be organized for " the subsequent revision of the agreements entered into." [22] Whether or not codification can be made legislative in the larger sense and to any considerable extent, in the immediate future, remains to be seen; but however that may be, the present movement is epoch-making in that it is a thoroughly scientific attempt to systematize and enlarge the rules of international law — and especially in that it deals primarily with the international law of peace, whereas conferences heretofore have concerned themselves very largely with the law of war.

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[20] On the work of this conference see *Monthly Summary* for March, 1930, 51 ff., and for April, 1930, 71 ff. See also David Hunter Miller, " Nationality and Other Problems Discussed at The Hague," 8 *Foreign Affairs,* 632 (July, 1930) ; Manley O. Hudson, " The First Conference for the Codification of International Law," 24 *A. J.*, 447 (July, 1930) ; Richard W. Flournoy, Jr., " Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law," *Ibid.*, 467; Jesse S. Reeves, " The Codification of the Law of Territorial Waters," *Ibid.*, 486. For Final Act of this conference, with text of convention on nationality, protocols, and reports of committees see *Official Documents,* 19 *A. J.*, 169 ff. (July, 1930).

[21] For report of the Special Committee of the Society on the Progressive Codification of International Law see *Proceedings for 1928,* 26. On the same subject see article by the chairman of this committee, Professor Jesse S. Reeves, 21 *A. J.*, 659 (1927).

The League method of approach to the problem has been wise in that its first efforts were directed to relatively narrow and non-contentious subjects; the temptation to risk defeat of the whole movement by proceeding too fast and far has been resisted. In adopting the plan of codification piece-meal, or by compartments, to use Professor Garner's phrase, it recognized at once the difficulty of the task and the fact that international law, to be such in essence as well as in form, must be based upon the general assent of the nations, voluntarily given, and that it must not outrun the public opinion of the world. Thus the designation, Progressive Codification of International Law, aptly expresses the principle underlying the movement.[23]

The movement for codification sponsored by the League has enlisted the helpful coöperation of several unofficial organizations. That of the American Society of International Law has already been referred to. In 1927 the Institute of International Law, a body of distinguished international jurists sitting at Lausanne, adopted a series of resolutions embodying brief statements of legal principles relating to several important subjects.[24] So also, in aid of the League enterprise, and in anticipation of the First Conference on the Codification of International Law, the Faculty of the Harvard Law School organized a Research in International Law for the purpose of drafting conventions on the subjects to be dealt with at this conference.

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[22] Manley O. Hudson, "The Development of International Law Since the War," 22 *A. J.*, 330, at pp. 348–349 (1928).

[23] For an interesting article describing the inception and organization of the League codification movement see Manley O. Hudson, "The Progressive Codification of International Law," 20 *A. J.*, 655 (1926). See also *Special Supplement* to *A. J., Vol. 22, No. 1* for text of documents from the League of Nations Committee of Experts for the Progressive Codification of International Law. In the Proceedings of the annual meetings of the Am. Soc. of Int. Law, and in numerous articles and editorials in the Society's *Journal,* will be found authoritative discussions of the more technical aspects of the subject.

[24] For text of these resolutions see *Special Supplement* to *A. J., cited above,* 330 ff.

The work of the eminent scholars and jurists enlisted in this enterprise took the form of draft conventions on the three subjects considered at the Hague conference, with elaborate comment on the several articles, and appendices embodying pertinent documents and other material.[25]

Significance of the First Codification Conference

While the results of the First Codification Conference were disappointing to those who anticipated a large measure of success, it is safe to say that the League movement for the progressive codification of international law will continue. The discussions in the conference clarified the questions dealt with — in itself a real achievement — and the agreements reached were of substantial value. The conference was but another illustration of the enormous difficulty of reconciling conflicting national policies and interests in seeking agreement on contentious questions, especially those involving political considerations. The progress of the League movement may have tempered the optimism of those who envisage a comprehensive statute book of the nations as the early fruit of codification, but the result to date may have been justly characterized by a recent writer: "The foundation has been laid for the continuance of the movement for the codification of international law." [26]

IV. Pan-American Codification Movement

A parallel codification movement has been under way for some years in the New World; indeed, in origin it antedates the League movement by two decades. In brief its history is as follows: At the third Pan-American Conference held at Rio de Janeiro in 1906, a convention was signed providing for an international commission of jurists, made up of one representative from each of the signatory states, to draft a code of public international law and one of private international law. This commission finally met at Rio de Janeiro in 1912, but the work following that meeting, interrupted by the World War, was not resumed until the commission met again at Rio de Janeiro in 1927, it having been reconstituted at the Pan-American Conference held in Santiago, Chili, in 1923. In the meantime the American Institute of International Law had been organized, made up of representatives of international law societies in each of the Republics of the Pan-American Union. The Institute proposed a series of thirty projects of conventions dealing with the most important topics of the international law of peace, which were considered by the International Commission at its Rio de Janeiro meeting.[27] The Commission there agreed upon twelve projects of international public law, and a code of private international law.

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[25] The Harvard Research draft conventions are printed in a *Special Supplement* to *A. J.*, for April, 1929.

[26] David Hunter Miller, *op. cit.*, 632.

At the Sixth Pan-American Conference held at Havana in January-February, 1928, these projects were discussed, and a number of them adopted.[28] The Conference went on record in favor of continuing the work of codifying public international law through the International Commission of Jurists, aided by a permanent committee to be organized for the purpose of presenting subjects susceptible of codification, with a view to "obtaining from the governments a statement as to the subjects which in their opinion might be the object of study, as a basis of the formulation of conventional regulations or of organic declarations."

Relation to the League Movement

The relation between this American movement and that sponsored by the League requires a word of comment. Obviously there cannot be, strictly speaking, an American system of international law as distinguished from the European system, although both terms are sometimes used, particularly with reference to the contributions which the Old World, and the New, have made to the general system.[29] True international law must be universal; and the Pan-American movement is not to be taken as evidence to the contrary. Charles E. Hughes, in his annual address for 1925, as President of the American Society of International Law, said:

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[27] These projects covered such subjects as: The fundamental bases of international law; states, their existence, equality, and recognition; status of aliens, treaties, diplomatic agents, consuls, and pacific solution of international disputes. For the history of the movement, see James Brown Scott, "The Gradual and Progressive Codification of International Law," 21 *A. J.*, 417 (1927); also address by him at the annual meeting of the Am. Soc. of Int. Law for 1925, *Proc.* 14. The text of these projects is printed in a *Special Supplement* to *A. J.*, Vol. 22, No. 1, 234 ff.

[28] The Conventions signed at Havana covered, among other subjects, commercial aviation, the status of aliens, treaties, diplomatic officers, consular agents, maritime neutrality, asylum, and the rights and duties of states in the event of civil strife. Also an elaborate code of private international law was adopted, but with reservations on the part of a number of states. See editorial by James Brown Scott in 22 *A. J.*, 351.

[29] Hershey, *op. cit.*, 1, note.

> Even in the case of the development of international law we may find advantage in the Western Hemisphere in dealing with the subject of American international law; not to derogate from the authority of the universal law, but to set forth in addition to the old law principles and rules which are found to relate to the special exigencies of the American Republics.[30]

So Elihu Root, discussing the two movements, has said that they are not "exclusive or competitive. They are contributory to a common end."[31] It might, indeed, be embarrassing if these contemporaneous movements should turn out to be competitive, from the fact that a large majority of the twenty-one republics of the Pan-American Union are also members of the League of Nations. This need not be the case, of course, if the American jurists confine themselves, as Mr. Hughes indicated, to the addition to the old law of "rules and principles which are found to relate to the special exigencies of the American Republics"; in other words, if the purpose is to develop a set of regional rules as distinguished from the body of international law.

To maintain this distinction consistently may be difficult, especially if the Pan-American movement, instead of confining itself to general principles, should undertake to deal with specific subjects. It seems highly desirable that the work of the League, and that of the Pan-American Union, should be coördinated, in so far as they are in fact parallel.[32] As stated by Mr. Root, in the article above referred to:

> They exhibit a general sense that the time has come when there should be no further delay in the necessary preparation for a general international conference which shall make more definite and certain and comprehensive the body of law by which international conduct is to be ruled.

The Outlook for Codification

The outlook for the future development of international law by legislation is promising, but progress is bound to be slow. New subjects of regulation — like radio-telegraphy, for example — lend themselves quite readily to legal control, the legislative process here being largely new applications of existing rules. Vastly more difficult is the task of reconciling long-standing divergencies of national view on questions deeply embedded in national policies, oftentimes involving rules promulgated by the national judiciary as settled law and long acted upon by the political department in the conduct of foreign relations.

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[30] *Proc.*, p. 7.

[31] "The Codification of International Law," 19 *A. J.*, 675.

[32] Editorial in 22 *A. J.*, 590.

The two hopeful aspects of the current legislative movement are, first, a keener appreciation of the need of amplifying the rules of international law to render it adequate to the needs of the new world order — a task that cannot wait upon the slow growth of custom; and second, the new technique of international lawmaking described above. It may be observed, also, that to a sense of the inadequacy of existing international law in the normal relations of states there has been added, especially since the Great War, a profound conviction that the assurance of peace among the nations can be greatly strengthened by bringing new areas of international intercourse within the domain of law, and by a corresponding development of the international judicial function.

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CHAPTER XXIII

LEAGUE ADMINISTRATION: THE SYSTEM OF MANDATES

The mandate system established under the Covenant of the League of Nations is an experiment in international administration of far-reaching importance. While its permanent value cannot yet be estimated, the principles involved, and the administrative methods incorporated into the plan, justify a rather full discussion of the system.

I. A PEACE CONFERENCE PROBLEM

The close of the World War found the victorious allies in military possession of certain Turkish and German territories. The former embraced Palestine, Syria, and Lebanon on the Mediterranean coast, and Mesopotamia, all inhabited chiefly by Arabs; the latter the German colonies in Africa and certain Pacific islands. These territories comprise an area of about one and a quarter million square miles and a population of some nineteen millions. In the disposition of these conquered lands the Peace Conference faced a difficult and delicate problem. Two or three alternatives were theoretically possible. One was restoration; but this would have been alike unjust to the inhabitants of the lands in question, many of whom had declared for the allied cause, and inconsistent with the undoubted right of the victors to treat them in some fashion as the spoils of war. The Arab countries might have been given outright independence, but this would have involved a political responsibility which they were deemed unfitted to assume, and possibly their later conquest by Turkey; while for the German African and insular possessions, independence was out of the question. Again, there was the traditional method of disposing of them as the legitimate fruits of victory by dividing them among the Allied and Associated Powers.

Conflicting Policies of the Allies

The situation was complicated by the fact that two fundamentally antagonistic Allied policies with respect to the disposition of conquered lands, in the event of victory, had been foreshadowed during the War. One, frankly imperialistic, was evidenced by a series of secret treaties and agreements entered into by the Principal Allied Powers during the years 1915–1917, under which they provided for the division of the territorial spoils of war. France and England had between them an understanding as to the annexation of the German colonies in Africa, and both had promised Italy territorial compensations in Africa in case they increased their possessions there. German Southwest Africa was ear-marked for the British Union of South Africa; Belgium was ambitious to share in the partition of German East Africa; and Great Britain and Japan were in accord as to the German island possessions in the Pacific — Japan to have those north, and Great Britain those south, of the equator, this division being assented to by their chief European allies. Other territorial changes were covered by these secret understandings, including the assignment of Turkish Syria to France, Mesopotamia and certain ports in Palestine to Great Britain. The imperialistic policy thus embarked upon paid no heed to the wishes of the populations concerned, and set up no safeguards against their selfish exploitation.[1]

The other line of policy took the form of a series of pronouncements in favor of the principle of no annexations and the right of self-determination. This policy went upon the theory that the welfare of the backward peoples was the primary consideration, and that it should be conserved by placing their territories under some form of international control, precedents for such treatment being found in the provisions of the Berlin Act of 1885 for placing the Congo basin under certain international regulations, and in the Algeciras Act of 1906 concerning the administration of Morocco.

This general policy was announced in several quarters during the War — by the British Labor Party in its memorandum on war aims promulgated in 1917; by the Inter-Allied Labor Conference, in 1918, in a pronouncement against imperialism; by the British Premier, David Lloyd George, and more vaguely by President Wilson, in Point Five of his Fourteen Points, which was:

> A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

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[1] Parker Thomas Moon, *Imperialism and World Politics* (1926), 473 ff.; Ray Stannard Baker, *Woodrow Wilson and World Settlement* (1923), Ch. II.

Origin of the Mandate Idea

Despite allied declarations to the contrary, the imperialistic policy of annexation, as embodied in the secret treaties and agreements above referred to between the principal allies, found considerable favor in the Peace Conference. President Wilson, however, insisted that the German and Turkish territories should be placed under some form of international administration, his plan taking the form of a system of mandates. The idea of international control over dependencies was not new. It had been recognized, in principle, in the Treaty of Berlin and the Algeciras Act, as stated above. So also, it had been definitely tried out in the form of joint international control. Samoa was for a time under what was called a condominium, or joint administration, participated in by Great Britain, Germany, and the United States. This was a failure, however, and resulted in the division of the island group between the three countries. The New Hebrides, northeast of Australia, are under the joint control of Great Britain and France, and this also is said to be unsuccessful. Nor has international administration been any more successful in the North African city of Tangier.[2] The League mandates differ from these schemes, as will be seen, in that they contemplate control by a single responsible state under international supervision.

The first definite suggestion of a mandates plan as a part of the peace settlement appears to have come from General Smuts. It was adopted by President Wilson, but in a more general form.[3] General Smuts confined his suggestion to the status of those racial groups into which Turkey, Austria-Hungary, and Russia seemed destined to crumble, while President Wilson extended it to all conquered territories outside of Europe, omitting Russia.[4] The plan as it finally took shape in the Conference differed substantially from that formulated by President Wilson on the basis of the Smuts proposals. It embraced only German and Turkish territories; it weakened the authority of the League over the mandates, and left some of the legal aspects of the system in considerable doubt. But it still embodied the two fundamental principles of President Wilson's conception — that of trusteeship, and that of League supervision.

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[2] See Isaiah Bowman, *The New World* (4th Ed., 1928), 192 ff., 286–287, 619, note; also F. B. Sayre, " International Administration," in Duggan, *League of Nations* (1919), 147.

[3] Charles Seymour, in *The Intimate Papers of Colonel House* (1928), Vol. IV, 54, note, points out that President Wilson had the mandates idea in mind before he reached Europe, remarking: " He doubtless sharpened his ideas regarding the mandatory principles as the result of his study of Smuts' pamphlet on the League." On the Smuts proposals see A. M. Margalith, *The International Mandates* (1930), 21 ff.

[4] For discussion of the origin of the mandate idea see article by Quincy Wright in *Michigan Law Review,* Vol. XXIII, 717 (1925), with numerous references; Pitman B. Potter, 20 *Pol. Sci. Rev.,* 842; Moon, *op. cit.,* 478; H. W. V. Temperley, *The History of the Peace Conference of Paris* (1924), Vol. VI, 500 ff.; D. H. Miller, " The Origin of the Mandates System," 6 *Foreign Affairs,* 277 (1928). Margalith, *op. cit.,* Ch. IV, discusses the antecedents and precedents of the mandates system.

II. Analysis of the System

The League system of mandates is outlined in Article XXII of the Covenant. The underlying principle is declared to be that the well-being and development of the colonies and territories

> which as a consequence of the late war have ceased to be under the sovereignty of the states which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, . . . form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

More specifically, this principle was to be effectuated by placing the peoples of these lands under the tutelage of advanced nations able and willing to assume the responsibility, as mandatories on behalf of the League. The covenant then makes a triple classification of the peoples and territories to which the mandate principle was to apply:

1. Certain communities formerly belonging to the Turkish Empire, so far advanced as to warrant their provisional recognition as independent nations, but still in need of administrative advice and assistance " until such time as they are able to stand alone." As to these countries, their wishes were to be a principal consideration in the selection of the mandatory. These countries are under what are known as Class A mandates.

2. Other peoples, especially those in Central Africa, were deemed to be less advanced, and therefore better placed under the administrative control of the mandatory, under safeguards with respect to political and social conditions to be alluded to later. These African peoples are under Class B mandates.

3. Still other territories, such as Southwest Africa and some of the South Pacific islands, were for one reason or another — sparseness of population, remoteness of location, or geographical contiguity to

the territory of the mandatory — held to be best administered under the laws of the mandatory as integral portions of its territory, under the same safeguards for their native populations as are prescribed for the class B mandates. These territories are under Class C mandates.

It is clear that the relations of the mandatories to the mandated peoples differ materially in these three classes of mandates. In the first class it is temporary and transitional, the primary function of the mandatory being that of advice and guidance pending the recognition of full statehood. Over the peoples of the second group the mandatory assumes administrative responsibility, preserving, however, the general integrity of the local system of government, modified, if need be, to enable the mandatory to meet the general requirements — maintenance of public order, prohibition of certain abuses, and the like — prescribed by the Covenant. In the third class the administrative identity of the group, if any previously existed, may be lost by absorption into the governmental system of the mandatory.

Establishment of the Mandatory System

The final establishment of the mandatory system involved a rather complicated procedure. First, sovereignty of the mandated territories passed, under the peace treaties, temporarily to the Principal Allied and Associated Powers, which included the United States;[5] and it thereupon became their duty to allot the territories to states willing to accept responsibility as mandatories, and in the case of the A mandates after due consideration of the wishes of the communities concerned. In general terms the effect of this double delegation of title or jurisdiction was to vest in the mandatories such administrative authority over the several classes of mandates as the Covenant contemplates, varying as already pointed out, and subject to the general supervision of the League. Precisely what has become, technically, of the sovereignty over the mandated territories formerly enjoyed by Germany and Turkey, has been a vexed question; it is discussed briefly below.

Allocation of Territories — Framing of Mandates

On May 7, 1919, the Supreme Council, acting for the Principal Allied and Associated Powers, allotted the mandates for the German

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[5] In the case of the Turkish territories, however, sovereignty passed only to the Principal Allied Powers, the United States not having been at war with Turkey.

Pacific and African possessions. The rule generally followed was to allocate each area to the state geographically nearest it. Accordingly German Southwest Africa passed to the Union of South Africa, the German islands south of the equator to Australia, Samoa to New Zealand, the German islands north of the equator to Japan, and the island of Nauru to the British Empire. The foregoing are all C mandates. The B mandates in Africa were allotted as follows: Togoland and the Cameroons to Great Britain and France, to be divided between them by mutual agreement; and German East Africa to Great Britain. On objection by Belgium a division of the latter mandate, approved by the Supreme Council, was agreed upon, Belgium obtaining the territories of Ruanda-Urundi, adjacent to the Belgian Congo.

The Supreme Council allocated the A mandates, in Turkish territory, as follows: To France, Syria and the Lebanon, and to Great Britain, Palestine and Mesopotamia, the former including what is known as Trans-Jordan,[6] and the latter commonly referred to as Iraq. In this allotment procedure the provision in Article XXII of the Covenant that, as to the communities formerly in the Turkish Empire (the A mandates) their wishes " must be a principal consideration in the selection of the mandatory," appears to have been ignored. Except as to Syria they may have had no wishes in the matter; in the case of Syria the choice of the mandatory was contrary to the wishes of the community so far as expressed. The mandated territories having been allocated, the next step was to draft the mandates — that is, to define the terms under which the respective mandatories should administer the territories assigned to them. This task was assigned to a commission representing the Principal Allied and Associated Powers. The United States took no part in the framing of the mandates, a fact which led to subsequent complications and considerable delay in their final confirmation.[7]

Provisions of the Mandates

As to certain basic conditions of administration, the draftsmen of the mandates were bound by the provisions of Article XXII of the Covenant. It is there stipulated that the mandated territories of the second and third classes shall be administered

> under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibi-

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[6] That is, the territory lying between the Jordan and the Syrian Desert.

[7] For text of the mandates see *Official Documents,* 17 *A. J.,* 138–193.

tion of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory.

The foregoing are minimum requirements which are explicitly prescribed in the mandates. They are reinforced in the mandates themselves by a general provision to the effect that the mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the mandated territories.

On some important points the B and C mandates go substantially beyond the literal requirements of the Covenant. For example, the obligation imposed by the Covenant upon the mandatory to prohibit the slave trade is materially enlarged in these mandates, in that the mandatory is enjoined to see that the slave trade is suppressed, and that no forced labor is permitted except for essential public works and services, and then only for adequate remuneration. And further, in several of the mandates the mandatory is obliged to provide for the eventual emancipation of all slaves, and for as speedy an elimination of domestic and other slavery as social conditions will allow; also to protect the natives from measures of fraud and force by the careful supervision of labor contracts and the recruiting of labor.[8] The traffic in intoxicating liquors is dealt with in all the mandates, by way either of a complete prohibition of supply to the natives,[9] or of a guarantee of strict control over the traffic. So also, uniform provisions appear looking to control over the traffic in arms and ammunition.

An important provision of the mandates for the Cameroons, East Africa, and Togoland is intended to protect the interests of the natives in their lands:

> In framing laws relating to the holding or transfer of land, the mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population.[10]

As to the B and C mandates, the Covenant undertakes to forestall the use of the mandated areas as military and naval bases of the mandatory power, and to protect the natives against compulsory military service outside these areas by prohibiting the establishment of fortifications or military and naval bases, and military training of

[8] In the mandates for the Cameroons, East Africa, and Togoland.

[9] As in the mandates for the Pacific islands and Southwest Africa.

[10] The reasons underlying this policy are discussed below.

the natives for other than police purposes and the defense of territory. Provisions to give effect to this guarantee appear in the mandates; but in those for French Togoland and Cameroons there is a provision in violation of this just and humane pledge:

> It is understood, however, that the troops thus raised may, in the event of general war, be utilized to repel an attack or for the defense of the territory outside that subject to the mandate.

This provision apparently means that France has the right to use these mandated territories as troop reservoirs in any war which she deems to be " general."

One other set of provisions appearing in some of the mandates should be mentioned as characteristic of the liberal spirit in which they were conceived. The Covenant prescribes as one of the conditions of the B mandates, that they shall secure " equal opportunities for the trade and commerce of other members of the League." Accordingly, provisions were inserted in the B mandates intended to embody the policy of the " open door " for all states members of the League. In general, they guarantee to all nationals of such member states equality of rights in the mandated territory with the mandatory's own nationals, as regards residence, travel, protection of person and property — in a word, full economic, commercial, and industrial equality.[11]

Status of the A Mandates

The A mandates differ materially from those of the other two classes. It will be recalled that the Peace Conference viewed the territories of this class, formerly Turkish, as entitled to have their independence provisionally recognized, and as subject to the rendering of administrative advice and assistance only until such time as they are able to stand alone. This more complete autonomy is reflected in the terms of the mandates. The British mandate for Palestine commits the mandatory to the encouragement of local autonomy "so far as circumstances permit," but makes no direct reference to the transitional character of the new régime, while the French Syrian mandate is more specific. Article I declares that the mandatory shall within a period of three years frame an organic law for Syria and the Lebanon, and shall enact "measures to facilitate their progressive development as independent states."

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[11] It was the contention of Japan that the C mandates should also assure equal opportunities for trade and commerce in the territories covered thereby. See text of the Japanese Declaration at the meeting of the League Council on Dec. 17, 1920, in *Official Documents,* 17 *A. J.,* 163. The United States claimed the right, as one of the Allied and Associated Powers, to pass upon the draft mandates. This right was finally conceded as to the B mandates. As to the Island of Yap, under a C mandate to Japan, the United States entered a protest because of the American cable interests there. The upshot of the matter was that the American interests in Yap were secured by a special treaty with Japan; and by other treaties with the mandatory powers the United States secured the same rights as members of the League in several of the mandates. See on this subject: Moon, *op. cit.,* 389, 485 ff.; Quincy Wright, *op. cit.*; W. R. Batsell, " The United States and the System of Mandates," *Int. Con.,* No. 213 (Oct., 1925).

The British mandate for Iraq is such in effect but not in form. In view of local conditions the British government, instead of proceeding as a mandatory, aided in the organization of a national government in Iraq, with King Feisal at its head, with which a treaty was negotiated containing the essential provisions that would have been incorporated into a mandate — religious freedom, the rights of minorities, the open door, etc. On the basis of this treaty, and with the approval of the Council of the League, Great Britain assumed responsibility as a mandatory, undertaking to give Iraq such advice and assistance as may be required without prejudice to her national sovereignty. A British High Commissioner is provided for, to give the king guidance in applying the provisions of the treaty. In July, 1930, Great Britain signed a treaty with Iraq, under which the independence of the country is to be recognized and guaranteed as against external aggression upon its entry into the League of Nations in 1932, Great Britain reserving the right to lease three air bases for the protection of her communications with India.[12]

III. CONTROL OVER THE MANDATES

Such is the framework of this new type of colonial administration. As suggested, the theory of the A mandates is that they shall result in the ultimate independence of the mandated countries. For aught that appears in the other mandates, or in the Covenant, the territories under the B and C mandates are destined to remain permanently thereunder. No modification of their status can be effected without the approval of the League Council, for all the mandates proper include a provision that the consent of the Council of the League of Nations shall be required for any modification of their terms.

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[12] On Iraq see general account of the country, people, etc., in Freda White, *Mandates* (1926), Ch. V; see also Moon, *op. cit.*, 495 ff.

But the affirmative power to propose amendments is left in doubt. It has been held that the Council alone cannot amend the mandates, nor can the mandatory alone, under the above provision. The authority of the Principal Allied and Associated Powers apparently ceased when they allocated the mandates. The better view seems to be that the mandatory and the Council, acting together, could modify a mandate, keeping, of course, within the spirit of the Covenant. Again, the power to terminate a mandate, or to transfer it from one state to another, is not defined in the Covenant. Termination would obviously be effected by the admission of the mandated country to the League; and probably termination by any other procedure, as well as transfer, could be effected by action of the mandatory, with consent of the Council.[13] It is unfortunate that these questions, which may in time give rise to controversy, are left in uncertainty.

So far as the interests of non-mandatory states in the mandated areas are concerned, the mandates provide that if any dispute should arise between the mandatory and another member of the League of Nations, relating to the interpretation or the application of the provisions of the mandate, it shall, if not settled by negotiation, be submitted to the Permanent Court of International Justice. Two questions of a rather technical nature, but of practical importance, have been raised in connection with the mandates. They should be noted in passing because they illustrate curiously the lack of precision with which Article XXII of the Covenant was drafted.

Sovereignty Over the Mandated Territories

One question is as to the legal status of the mandated territories — or, to be more specific, what has become of the sovereignty over them which formerly vested in Germany and Turkey? According to one theory, it passed to the mandatory, the legal effect of the allocation of territory being annexation. In practice this view has not been taken, either by the Council or by the Mandates Commission. The position of the latter will be referred to later. The Council held, on a question arising between Great Britain and Belgium concerning the boundary between their East African mandates, that once a mandate has been approved by the Council, no part of the territory can be ceded away without the consent of the Council.

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[13] See Quincy Wright, "Sovereignty of the Mandates," 17 *A. J.*, 691 (1923). The Arabs have lately asked the League to nullify the Palestine mandate, on the basis of Lord Balfour's communication to the king of the Hedjaz, in 1918, in which he refers to the favorable attitude of Great Britain "towards any movement having for its object the liberation of oppressed peoples," and pledging the support of Great Britain in the struggle of the Arab nations to reconstruct an Arab empire. See *New York Times* of July 18 and July 27, 1930, and XXXII *Current History*, 1022–1024 (Aug., 1930).

Another view is that ultimate sovereignty is vested in the League of Nations; but it is difficult to see how this can be maintained. As already stated, the Principal Allied and Associated Powers, to which the territories passed by treaty,[14] transferred them directly to the mandatories, which were to administer them " as mandatories in behalf of the League." This relationship might perhaps imply ultimate control, amounting to rights of sovereignty, in the League. But the Council has disclaimed authority over the assignment of mandates, over their territorial limits, and over the terms of a mandate once formally accepted.[15]

Still other theories have been advanced as to the legal effect of the measures whereby the mandates came into existence; [16] indeed, Wright suggests that it is not certain that complete sovereignty rests anywhere. He concludes that " there will be a close approach to truth in ascribing sovereignty of mandated territories to the mandatory acting with the consent of the Council of the League." [17] The question might have practical importance in the event of the proposed transfer by the League of a mandate from one power to another, because of failure to meet the obligations of the mandate, or for other reasons; or of the proposed recognition of the independence of a mandated people who had demonstrated their ability to govern themselves.

Nationality of the Inhabitants

The other question relates to the nationality of the natives of the mandated territories. Did they, by reason of the creation of the mandates, become nationals of the mandatory power? This could hardly be held as to the A mandates, because the Covenant fairly assumes that their inhabitants are to enjoy a distinct nationality; but as to the B and C mandates the case is not so clear. The question has been raised on various occasions; it finally came before the Council at its 24th session in April, 1923, on the request of the government of the Union of South Africa for the Council's approval of a plan for the collective naturalization of the German settlers in its German Southwest Africa mandate, so that they might share in the political life of the territory. The general conclusions of the Council were embodied in resolutions drafted by the Mandates Commission and adopted by the Council on April 20, 1923, the substance of which was this:

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[14] The American contention was that title so passed as a result of the War, and that therefore, irrespective of the treaty, the United States had a right to a voice in disposing of them.

[15] Wright, *op. cit.*, 697 and references.

[16] See R. L. Buell, *International Relations* (Rev. Ed., 1929), 357–358.

[17] Wright, *op. cit.*, 698. On this general subject see M. F. Lindley, *The Acquisition and Government of Backward Territory in International Law* (1926), 263 ff. Margalith, *op. cit.*, Chs. VIII and IX, discusses it fully. In his important book, *Mandates Under the League of Nations*, p. 530, published after this chapter was written, Professor Wright expresses the view that sovereignty of the mandated areas is " vested in the League acting through the Covenant amending process, and is exercised by the mandatory with consent of the Council for eventual transfer to the mandated communities themselves." The subject is too technical to be discussed here. Professor Wright reviews the various theories of jurists in Ch. X of his book.

> The status of the native inhabitants of a mandated territory is distinct from that of the nationals of the mandatory power and cannot be identified therewith by any process having general application.

The resolutions added that it would not be inconsistent with this principle for the mandatory power to provide for naturalization of the individual inhabitants of the mandated territory under its own law.[18]

The Mandates Commission

Under Article XXII of the Covenant, the mandatories act as such "on behalf of the League." How does the League enforce this responsibility? General supervisory power is vested in the Council of the League, aided and advised by a Mandates Commission.[19] The mandates as allocated by the Principal Allied and Associated Powers were confirmed, and the terms thereof defined, by the Council. Article XXII prescribes that each mandatory "shall render to the Council an annual report in reference to the territory committed to its charge"; and further, that a Permanent Commission shall be constituted to receive and examine these reports, "and to advise the Council on all matters relating to the observance of the mandates."

In practice this Mandates Commission is the pivotal agency in the supervision of mandate administration. Formally its relation to the Council is that of an advisory body; in fact, and of necessity, it largely dominates the policy of the Council because of its more direct

[18] *Official Journal for 1923*, p. 604. See Quincy Wright, "Status of the Inhabitants of Mandated Territory," 18 *A. J.*, 306; Batsell, *op. cit.*, 31–32.

[19] See Report by the Council to the Assembly on the Responsibilities of the League arising out of Art. XXII, Annex 14.

contact with the mandatory administrations. As will appear later, the performance of its duty to "receive and examine" the annual reports of the mandatories has developed into a real power of inquisition, so to speak, whereby the mandatories may be taken to task, politely but effectively, for administrative sins of omission or commission.

The Permanent Mandates Commission, as established by the Council, was made up of nine members, a majority of whom should be nationals of non-mandatory powers, appointed by the Council. In 1927 this number was increased to ten by the addition of a German member. While members of the Commission they must not hold any office which puts them in a position of direct dependence upon their governments. The International Labor Office has the right — which it exercises — of appointing to the Commission an expert having the right to attend, in an advisory capacity, all meetings of the Commission at which questions relating to labor are discussed. The members of the Commission so far appointed have been exceptionally well qualified to deal with colonial questions; some have been colonial experts of high reputation, with practical experience gained in important administrative positions under their home governments.[20] It is to be noted that they act as individuals, not in any sense as representatives of their respective governments. The Commission meets annually in Geneva, its sessions lasting from two to three weeks, with special sessions when necessary to deal with extraordinary situations.

Functions of the Council

By direction of the Council the mandatory powers send their annual reports to the Commission through duly authorized agents, who must be prepared to offer any supplementary explanations or information which the Commission may request. The Commission examines each report in the presence of the mandatory's representative, holding itself free to go fully not only into the details of administration set forth in the report, but also into the general principles of administration adopted for the territory under consideration. The examination ended, the representative withdraws and the Commission proceeds to embody its conclusions in a report to the Council. This report is communicated to the accredited representative of the mandatory power, who is entitled to accompany it with any comments he may desire to make.

[20] As now constituted the Commission includes three or four such members.

Ordinarily the Council forwards to the mandatory power concerned the observations made by the Commission, requesting them to take the necessary action to meet the recommendations or suggestions made by the Commission, or to explain why it may not be deemed possible to do so. Nor does the process of supervision stop here. In his annual report to the Assembly the Secretary-General of the League communicates to that body the work done during the year by the mandatory powers and the Mandates Commission, and the action taken by the Council with respect thereto; and the Assembly, through its political committee — called the Sixth Committee — brings the whole record under discussion.

It is in this connection alone that the Assembly comes in touch with the mandates system. Its debates are often searching, and the publicity given the proceedings constitutes them a powerful weapon of criticism. A full report of the work of the Commission is also published, covering every department of the mandatory administration, including such matters as: New legislation affecting the mandated territories, the administration of justice, agriculture, education, land matters, public health, public works, child welfare, moral questions, vital statistics, public finance, labor, and the arms and liquor traffic. Some reports cover a variety of other topics suggested by local conditions.

The reports of the mandatories are prepared on the basis of a questionnaire prepared by the Mandates Commission and intended to elicit all pertinent data concerning the administration of each mandate. Supplemented as the formal reports may be by oral examination of the representatives of the mandatories, the Commission is enabled to have before it fairly adequate information on which to base its communications to the Council. In its supervisory work in general it is aided by the mandates section of the Secretariat of the League, whose duty it is to correspond with the governments of the mandatory powers, and to serve as a permanent secretariat for the Commission.

Natives May Petition for Redress of Grievances

The natives enjoy the privilege of petitioning for relief against alleged infractions of the terms of the mandates or administrative abuses, and many petitions of this character are brought before the Commission.[21] Such petitions are sent to the Secretariat of the

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[21] See, by way of illustration, summary of the work of the Commission at its 15th Session, July 1–15, 1929, in *Monthly Summary* for Sept., 1929, p. 258.

League through the mandatory government, with such comment or explanation as the government in question may see fit to make. So also, petitions from sources other than the populations of the mandated areas may be communicated to the chairman of the Mandates Commission, who decides which of them, if any, are worthy of attention. Such as are so considered are communicated to the mandatory in question with the request that it furnish such comments as it may deem desirable within a specified time.

All petitions thus properly presented and deemed material are considered at the next ensuing session of the Mandates Commission; and the Commission decides which of them shall be sent to the Council and members of the League, accompanied by the observations of the mandatory powers and the minutes of the meeting at which they were discussed. This procedure has been criticized as curtailing too severely the right of the natives to voice their grievances. It is undoubtedly open to abuse; governments may conceivably pigeonhole petitions, or unreasonably delay submitting them to the Secretariat; but to do so would be to risk adverse comment, possibly in the Assembly itself. The Council, in prescribing this procedure, had in mind the importance of affording the native populations a right of appeal for the redress of substantial grievances, and the equal importance of discouraging " seditious or trivial petitions by persons whose motives may be either culpable or frivolous." [22]

It has been urged that it is unjust to deny the natives the right to appear before the Commission and present their petitions personally, supporting them with oral evidence. Thus the governments would not have the last word, so to speak, in their comments on the petitions. However, petitions may be made the basis of searching cross-examination of the representatives of the mandatory powers who appear in person, and may suggest the need of supplementary data bearing on the subject-matter of the petitions; this the Commission may call for to enable it to reach just conclusions.

Thus the administration of the mandatories is subjected to close scrutiny at the hands of an able, unprejudiced body of technical experts, whose work, on the whole, is exceedingly well done. Its reports to the Council are by no means routine and colorless, but embody much temperate, constructive criticism. On several occasions it has dealt with exceptional situations with vigor and courage. Two illustrations may be cited:

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[22] Resolution adopted by the Council on June 11, 1923.

The Bondelzwart Case

In 1922 the so-called Bondelzwart case arose in Southwest Africa, under mandate to the Union of South Africa. In brief, the incident was this: The natives rebelled against the payment of certain taxes which they considered unjust and oppressive, non-payment thereof being severely penalized. Finally a small tribe of Hottentots, the Bondelzwarts, rose in rebellion. The government sent a military force against them, with machine guns and airplanes, their camp was bombed, and more than a hundred of them killed outright.

At the next Assembly of the League, on the initiative of a colored delegate from Haiti, the Assembly went on record as expressing the confident hope that the Mandates Commission would consider the matter; and the delegate from the Union announced that his government proposed to make a special inquiry on the spot. The report on this inquiry was before the Commission at its third session in 1923, and the two representatives from South Africa were exhaustively examined. The Commission's report on the occurrence was distinctly critical of South Africa. The matter was again before the Assembly of 1923, which expressed regret that satisfactory conditions had not yet been reported in the Bondelzwart district. The upshot was that South Africa announced in its next annual report to the Commission, that the laws which prompted the rebellion had been modified, and measures taken to alleviate the condition of the natives.

The Syrian Revolt

The other case, better known and more serious, arose in Syria, under French mandate. The story is too long to be detailed; in brief it is as follows:

At the close of the War sentiment in Syria was strongly in favor of independence. That the Syrian people desired not only independence but the creation of an Arab state by union with other Arab lands was established by a commission sent to Syria during the Peace Conference by President Wilson. This did not chime in with French policy; and it tends to explain some of the difficulties which complicated the French mandatory administration — difficulties further accentuated by the fact that the Syrian people, if they were to go under mandate, preferred the United States as mandatory, their second choice being Great Britain. Ignoring these aspirations and desires, the French, under threat of military force, established themselves in Syria and proceeded to work out an administrative organization. Tactless and arbitrary measures adopted by the French High Commissioner added fuel to the flames of political discontent. Soon rebellion broke out and severe measures were resorted to by the French, culminating in the bombardment of Damascus.

The Syrian rebellion brought the Mandates Commission face to face with a situation which demanded courageous treatment if the mandate system was to be vindicated, as French policy in Syria had been widely and bitterly criticized. At an extraordinary session held in February, 1926, the Commission had before it a special report on Syria submitted by the French government at the request of the Commission. This report was supplemented by information given by a special representative of the French government, who was questioned for two weeks. The Commission went thoroughly into all phases of the Syrian administration, including the causes of the political unrest there and possible remedies therefor. Its report was frankly critical of French administration, both in point of general policy and as to particular measures carried out by the mandatory. It made suggestions and recommendations as to steps that ought to be taken to better conditions. It is noteworthy that this report was unanimously adopted by the Council notwithstanding that a French member was sitting.

Another report on Syria was before the Commission in November, containing supplementary information asked for and satisfactory explanations on points raised at the February meeting, together with lengthy reports of special independent commissioners sent out by the French government. The Commission found that many of the recommendations made by it in February had been carried out by the mandatory. Later reports from the French government indicate that the tendency of French administration has been " in the direction of allowing the Arabs not only to administer the country themselves, but to work out for themselves the whole constitutional basis for the future administration of the territory." [23]

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[23] Huntington Gilchrist, Assistant Director of the Mandates Section of the League Secretariat, in pamphlet entitled " Imperialism and the Mandates System," published by the League of Nations Non-partisan Assocation (1928), p. 26. Quite recently the British mandatory administration in Palestine was pointedly criticized by the Mandates Commission, in connection with the so-called Wailing Wall riots in August, 1929. See on this incident *New York Times* for Aug. 25, 1930; also *Manchester Weekly Guardian* for Aug. 29, 1930; *Monthly Summary* for August, 1930, pp. 146 ff. The Official Minutes of the Seventeenth (extraordinary) session of the Mandates Commission, held at Geneva in June, 1930, cover in full detail the investigation of Great Britain's administration of

IV. IMPORTANCE OF THE MANDATES PRINCIPLE

The significance of this experiment in colonial administration can hardly be exaggerated. It was launched under unfavorable auspices. Viewed by some of the states in the Peace Conference as a convenient means of solving the thorny problem of applying to these conquered territories the maxim "to the victors belong the spoils," it was widely felt in circles outside the Conference that "mandation" was but a polite synonym for annexation.

That the system is working surprisingly well appears to be the general opinion of those who have studied it in operation. As already stated, the pivotal factor in the system is the Mandates Commission. Although clothed with power merely to receive and examine the annual reports of the mandatories, and to advise the Council on matters relating to the observance of the mandates, it has steadily exerted an influence out of all proportion to its formal powers. Its work has been characterized by tact as well as independence; its recommendations carry weight because its members, many of whom have had actual experience in colonial administration, understand the practical difficulties that beset the relations of white administrators with backward native populations. Its reports embody many suggestions helpful to the mandatories; while on occasion, as has appeared, it does not hesitate to condemn practices and policies inconsistent with the spirit of the mandates.

Abuses in Colonial Administration

To be understood in its aims and methods the system must be seen against the background of modern colonial administration. The enormous expansionist movement of the white man in modern times has brought more than half the land surface of the globe and more than a billion of its inhabitants — of the brown, black, and yellow races — under his control. In other words, the vast populations of the backward countries of the world are more or less completely under the domination of a few Western imperialist nations. The story of this great movement is dramatic in the extreme;[24] it contains chapters illuminated by the spirit of unselfish devotion and self-sacrifice — a passion for service in behalf of backward peoples,

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the Palestine Mandate made by the Commission, with special reference to the Wailing Wall affair.

[24] See Moon, *op. cit.,* for a full and readable discussion of modern imperialism.

and other chapters, unhappily, which exhibit the sordidness and brutality of human nature at its worst.

In surveying this colonization movement as a whole, it is seen that it has been characterized, more or less definitely, by two types of policy as regards native populations. One is aptly called the policy of exploitation, the other that of trusteeship. The former is motived primarily by the desire for economic advantage, with secondary or incidental regard for the welfare of the natives; the latter, in general, goes upon the theory that the advanced peoples, in taking advantage of the economic wealth of backward countries, are under an inescapable obligation to promote the highest welfare of the inhabitants along social and intellectual as well as material lines. Probably no colonizing power has consistently pursued either of these policies. In some cases régimes intended to be humane and helpful to the natives have doubtless been perverted by unfit administrators, and the resulting abuses have gone unrebuked and unremedied because of slackness on the part of the home authorities or the ignorance of the home people as to colonial conditions. In other words, effective agencies were lacking to supervise the methods and results of colonial administration, and to enlighten the public as to abuses.

The Problem of Native Labor

Again, governments have sometimes been at fault in setting colonial revenues, or the profits of government-protected enterprises, above the welfare of the natives, and thus tolerating abuses in an attempt to make their colonial possessions pay. Here again, the difficulty has often been that governments, recognizing no international responsibility, and being under no international supervision, have ignored conditions which doomed the native populations to unspeakable hardship and degradation.[25] These abuses have in the main taken two or three familiar forms. One has been the exploitation of native labor. The development of the economic resources of these colonial possessions requires both capital and labor. Capital can be supplied by the dominant power — indeed, colonization has been largely a capitalistic enterprise; but climatic and living conditions are ordinarily such that only native labor is available. Hence the labor problem is fundamental, and its solution by his white taskmaster has often grossly victimized the native. In some cases he has been forced to work under conditions falling little short of actual slavery. In others, resort has been had to labor imported from neighboring colonies or some overpopulated country like China or India, under hard contracts virtually forced upon ignorant workers — contracts which stipulated for compensation and maintenance below the minimum requirements of decent living.[26]

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[25] On the contrasted policies of exploitation and trusteeship see Buell, *op. cit.*, Chs. XIV and XV.

This fruitful source of native hardship is eliminated from the mandated countries by the provisions of the mandates already referred to — the prohibition of forced labor except for essential public works and services (sometimes necessary for the development of the country) and at an adequate compensation. Moreover, in some of the mandates it is made the duty of the mandatory to protect the natives against measures of fraud and force by the supervision of labor contracts and the recruiting of labor. In order to give full effect to these provisions the Mandates Commission was organized to include a member of the International Labor Office, who should sit as an expert on labor questions. No subject has been dealt with by the Commission more frequently than this. Its reports refer repeatedly to special labor conditions in the mandated regions. Not only this, but it has given consideration to the general problem of protecting the natives from excessive demands for labor in the economic development of the mandated territories.

To this end the mandatories are required to answer this question in formulating their reports to the Council:

> Does the local supply of labor, in quantity, physical powers of resistance and aptitude for industrial and agricultural work conducted on modern lines appear to indicate that it is adequate, as far as can be seen, for the economic development of the country?
>
> Or does the government consider it possible that sooner or later a proper care for the preservation and development of the native races may make it necessary to restrict for a time the establishment of new enterprises or the extension of existing enterprises and to spread over a longer term of years the execution of such large public works as are not of immediate and urgent necessity? [27]

These inquiries afford a good illustration of the work done by the Commission in establishing sound principles of colonial administration.

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[26] On the evils of imperialism see brief statement in Noel Buxton and T. P. Conwil-Evans, *Oppressed Peoples and the League of Nations* (1922), 21 ff.; Moon, *op. cit.*, *passim*.

[27] Gilchrist, *op. cit.*, 19. See also H. A. Grimshaw, "The Mandates System and the Problem of Native Labor," Ch. V, in *Problems of Peace*, Third Series, Lectures delivered at the Geneva Institute of International Relations in 1928.

The Problem of Native Lands

Another abuse in colonial administration has concerned the policy pursued by colonizing powers in dealing with native lands. In some cases these lands, held in common ownership under native custom, have been divided up and alienated, passing into the hands of white men; or if parceled out among the natives, speedily gotten hold of by unscrupulous white men. In other instances the natives have been driven off their lands, and thus, becoming landless, have been forced by necessity to work for white employers. Here again, the mandates over territories wherein these evils might arise guard against them by pledging the mandatories, in their land legislation, to take native laws and customs into consideration, and to respect the rights and safeguard the interests of the native population. The question of the administration of the public lands in some of the mandated territories has been before the Commission. For example, in French Togoland and New Guinea (under Australian mandate), formerly German colonies, the public lands were referred to in legislation as state land, or crown land. The Commission raised the question whether the mandatories considered that this public land was owned by them in their own sovereign right, or as mandatories and therefore in trust for the natives. The mandatory powers agreed that they held it in trust; whereupon the Commission suggested that the text of the laws should be changed to conform to this theory, which has been done.

In a variety of other ways native populations have been oppressively and injuriously dealt with by the colonial powers. Particularly reprehensible has been the practice of suffering a people to be debauched by the widespread use of intoxicating liquor and drugs — a traffic from which some governments have derived a profit. It has already appeared that in the B and C mandates the mandatories are enjoined to exercise a strict control over the sale of spirituous liquors, and are made responsible for the promotion to the utmost of the material and moral well-being and the social progress of the inhabitants. Moreover, the reports of the Mandates Commission bear evidence that it is observant of conditions in the mandates affecting the physical and moral welfare of the natives. To illustrate, in the report of the work of the twelfth session of the Commission (October–November, 1927) the mandate administration in British Togoland is advised that fuller information in future reports concerning the increasing amount of spirituous liquors brought into the territory would be appreciated — a polite way of requesting it.

Success of the Mandates Commission

Notwithstanding the meager powers conferred upon the Mandates Commission as the active League agency in the supervision of the mandate administration, its work has been remarkably successful. This had been due in part to the preëminent fitness of its members for the delicate functions entrusted to the Commission. It speaks with authority, and acts in an admirable spirit of detachment from national prejudices and interests. Moreover, its investigations and recommendations are characterized by the tactfulness and restraint necessary to insure them a favorable hearing in the Council, where sit the representatives of the more important mandatory powers — Great Britain and France. It does not issue orders; it contents itself with expressing concern over mandatory sins of omission and commission, and the hope and expectation of remedial action. Although without the means of securing first-hand information regarding conditions in the mandated territories, its comprehensive questionnaires, and its oral examination of the representatives of the mandatories, enable it to reach sound conclusions on the general lines of policy followed by the mandatories. Evasions or shortages in the reports are readily detected, and fuller information elicited on request.[28]

Summing up the value of the Commission, Dr. William E. Rappard, himself a member of it, says:

> It is thus that the Permanent Mandates Commission, which has come to be regarded in all the mandatory countries with genuine respect and confidence, enjoys a degree of authority and can wield an influence which the authors of Article XXII could hardly have foreseen and which no formal commentator of its provisions would suspect.[29]

Again, the international publicity given to the administration of the mandated districts, through the publication of the annual reports of the mandatory powers, the reports of the work of the Commission, and the Assembly debates on special questions brought up there, is most salutary. A mandatory does not relish adverse criticism of its trusteeship, and will avoid it if reasonably possible.

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[28] It has been proposed that the League should have a resident commissioner or representative in each mandate to receive complaints and to advise the Mandates Commission as to the observance by the mandatory power of the letter and spirit of the Covenant.

[29] *International Relations Viewed from Geneva* (1925), 38.

Even though it might resort to subterfuge to delay, or even to defeat, reforms proposed by the Commission, it is not considered good policy to do so. Nor does the mandatory fear adverse foreign criticism alone, should it prove faithless to its trust. Opposition parties in the home parliament, alert to discover points of attack upon the government in power, make the most of League criticism of its mandate administration, or may raise issues in that field independent of League action. On the other hand, the responsible government may in turn make political capital out of its success as a mandatory, as evidenced by the approval of the League.

General Influence Upon Colonial Administration

The publicity given the reports of the mandatories and the proceedings of the Commission is significant from another point of view. It gives colonial administrators everywhere a valuable body of information bearing upon the conditions of life among native peoples, and the problems involved in political control over them. In this way the mandates system is setting up higher standards of colonial administration which cannot but be influential in guiding the colonial policies of non-mandatory powers, as well as those of the mandatory powers in non-mandated colonies. This influence is seen concretely in the case of mandates, like those for the Cameroons and Togoland, which are administered as integral parts of adjoining colonies. In supervising administration of the mandate the Commission necessarily deals with that of the colony.

The policy of trusteeship and that of exploitation are fundamentally inconsistent, and cannot permanently coexist. To embody the former in a system of administration like that contemplated by Article XXII of the Covenant — a system based upon humanitarian principles, adequately supervised, and backed up by international public opinion — was to promote the observance of higher standards of responsibility in the relations between backward peoples and their political masters.

The reports of the Commission, embodying as they do comment and suggestions on a wide variety of colonial problems, set forth certain fundamental principles of colonial administration — the duty to promote the health and education of the natives, to protect them against excessive demands upon their labor, to safeguard them against oppressive contracts for service, and against unjust deprivation of their lands. These principles, steadily adhered to by the Commission and widely understood and approved, will tend to be universally recognized as characteristic of enlightened colonial administration.

The complete triumph of the mandate system would be the application of its two basic principles — expert supervision and collective responsibility, to the administration of colonies generally. Says Buell:

> One of the greatest steps toward world peace would be a treaty signed by the ten leading colonial powers, guaranteeing the Open Door in their colonies and just treatment for the natives, as provided in the mandates, subject to the supervision of the Mandates Commission.[30]

Needless to say, the League has no power to extend the system, nor are the imperialistic nations likely to surrender their plenary control over their colonial possessions. But it is inevitable that questions of colonial administration will come to be more and more recognized as of international concern; and granted the continued success of the mandates system, it may be possible to secure agreement by the colonial powers upon some international body with purely advisory functions to aid them in the solution of their colonial problems.[31]

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[30] Buell, *op. cit.,* 368.

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CHAPTER XXIV

LEAGUE ADMINISTRATION: THE PROTECTION OF MINORITIES

I. Minorities in International Relations

It has already appeared,[1] that one of the common characteristics of a group of people constituting a nation-state is a more or less complete homogeneity of race, language, and religion. It was pointed out that these factors are not always present; that any one or more of them may be absent without making impossible that group unity essential to the organization and maintenance of a state. As a matter of fact, no nation exists in which the people are all of one race, language, or religion. Such has been the historical distribution of the different races throughout the world, such the variety of languages and religions, and such the circumstances giving rise to the political division of the world into nations, that within every nation is found some diversities of blood, language, and religion.

When a state embraces any substantial number, relative to the whole population, of inhabitants differing from the mass of its people in race, language, or religion, it may be said to have a minority. Inasmuch as the racial factor is the most fundamental mark of distinction, such a group is commonly referred to as an ethnic minority. Thus, in discussing the protection of minorities, the term is taken to apply to groups of persons who differ in race, language, or religion from the majority of the inhabitants of the country.

Such minorities are no new phenomenon in international life, nor is the problem of their protection novel; indeed, they go back in germ to the " stranger " of ancient times, who was regarded as an enemy or a guest according to circumstances. Ever since the rise of the modern state system the protection of aliens has entered into the relations of states as a matter to be regulated by treaty. The " capitulations," or agreements entered into between certain oriental states — Persia, Siam, China, and until somewhat recent years Japan — and the Western states, were for the protection of Christians sojourning or trading in these Eastern countries, affording them recourse to consular courts under the jurisdiction of their own countries.[2] But the minorities under discussion are not necessarily aliens; they may also be nationals of the country wherein they reside — a constituent part of its population and therefore entitled to its full protection. Generally speaking, they may be ethnic or religious; the former have not constituted an international problem until comparatively recent times, while the latter have played a dramatic part in modern diplomatic history.

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[1] *Ante,* Ch. IV.

Earlier Minorities Treaties

Beginning with the Peace of Westphalia in 1648, a series of treaties have recognized the principle of freedom of worship under government protection for religious minorities, who were often made up of the inhabitants of territories ceded by one state to another.[3] Occasionally rights other than that of religious freedom have been guaranteed to minority groups. For instance, at the Congress of Vienna, in 1815, political guarantees were given the Poles who, by the partitions of Poland, had become subjects of Russia, Prussia, and Austria. So also, when the Kingdom of Greece was created, in 1830, Greece undertook to grant equal political rights to all her subjects without distinction of religion. Again, on the occasion of the union of Holland and Belgium, in 1815, the European powers proclaimed the principle of equal protection for all the inhabitants thereof, regardless of sect. And in the Final Act of the Congress of Berlin, in 1878, which recognized the independence of Roumania, Serbia, and Montenegro, the principle of equal civil and political rights for minorities was affirmed.[4]

These attempts to protect minorities by international agreement have met with indifferent success, for one reason or another. Without any stipulated means of establishing the facts alleged to constitute a violation of its undertakings, or of interpreting the terms of the agreement, a state could deny guilt with impunity. But their most fundamental weakness was the lack of any enforcing authority. It was ordinarily left to the covenanting states to supervise the observance of the guarantees, and to assume responsibility for any diplomatic measures necessary to ensure respect for them. At best this was a delicate duty to perform, involving voluntary intervention on the part of any state disposed to take so drastic a measure. In so far as the Concert of Powers functioned, it might intervene, but its interventions might be dictated by political as well as social or humanitarian motives; it was frequently too discordant for collective intervention, and at length its effectiveness for any joint purpose was paralyzed by its division into the Allied and Entente groups.

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[2] Capitulations were terminated by Turkey under the Treaty of Lausanne, and China is now insisting that this right of extraterritoriality, as it is called, be done away with because incompatible with her internal sovereignty.

[3] Up to 1815 at least seven such treaties contained provisions of this nature, and several have since been entered into. R. L. Buell, *International Relations* (Rev. Ed., 1929) 182.

[4] For a brief history of the protection of minorities up to the World War see Helmer Rosting, "Protection of Minorities by the League of Nations." 17 *A. J.*, 641 (1923); also C. de Visscher, *The Stabilization of Europe,* Harris Foundation Lectures for 1924, 27 ff.

A Problem of International Concern

The protection of ethnic minorities constitutes an international problem of great importance. Before the War more than fifty million people in Europe were living under governments administered primarily in the interest of races alien to them, governments reluctant to accord them equality of rights and privileges with the ethnic majorities. Internal guaranties of fundamental rights frequently existed, but with no international accountability for their enforcement they were indifferently observed. The internal policies of nations having ethnic minorities ranged all the way from the most flagrant repression — measures of assimilation designed to blot out the ethnic characteristics of the group, to the grant of substantial local autonomy or self-government. But autonomy obviously was adapted only to compact groups occupying circumscribed areas; it could not be granted to a minority scattered through the body of the population.

The minorities problem is a factor disturbing to international peace. Oppression of such groups anywhere excites the sympathy and stirs the resentment of members of the same race or faith everywhere, sometimes prompting intercession even on the part of governments not racially allied.[5] As a recent illustration of this may be cited the treatment by Italy of the Germans in the Trentino, so-called, an area set off from Austria to Italy by the treaty of Saint-Germain. Italian policy in this region has been bitterly resented by the Germans of Austria and Germany, and has disturbed friendly relations between the countries concerned. Thus, says Bowman, the design of the minorities treaties " is not merely to be just to minority populations, to see that they have equality of treatment at the hands of a dominant national group, . . . but also by equality of treatment to prevent those forms of bitter propaganda which keep alive hatreds between peoples and lead directly to international scheming and war." [6]

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[5] As for example, the intercessions of the United States in behalf of persecuted Jews in Mohammedan Countries and Russia. See J. B. Moore's *Digest of International Law,* Vol. VI, 347 ff.

In redrafting the map of Central Europe, the Peace Conference undertook to reduce the number of racial minorities, and thus to minimize this fruitful source of international friction. The recognition of the Succession States [7] was an attempt to make state lines and ethnic lines more nearly coincide, as was the setting up of a Greater Serbia. It is estimated that the total number constituting the ethnic minorities of Europe was reduced from over fifty million to less than twenty million.[8] In some few cases the policy of eliminating minorities was sacrificed to political expediency; the transfer of the Trentino, or South Tyrol, mentioned above, is an illustration. But it was inevitable that minorities should remain; in fact, many new minorities were created by the Peace treaties. Former Germans of Germany are found in Poland, Danzig, Schleswig, Alsace-Lorraine, the Saar Valley, and Upper Silesia (Poland). So also former Germans of Austria are now in the Italian Tirol and Trentino, Jugo-Slavia and Czechoslovakia, and former Germans of Hungary in Roumania and Jugo-Slavia. New Hungarian (Magyar) minorities were created in Roumania, Czechoslovakia, and Jugo-Slavia, and new Bulgarian minorities in Roumania, Thrace (under Greece), and Jugo-Slavia.[9] Buell points out [10] that about one-fourth of the population of Jugo-Slavia, one-third of that of Roumania, two-fifths of that of Czechoslovakia, and well towards one-half of that of Poland, consist of ethnic minorities. The Peace treaties set off to Italy 400,000 Slavs and 220,000 Germans. Now living as newly created minorities in Europe are over 7,000,000 Germans, nearly 3,000,000 Magyars, and over 1,000,000 Bulgars.[11] Thus the new frontiers of Europe reduced the number of minority peoples and at the same time accentuated the difficult problem of their protection.

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[6] *The New World* (4th Ed., 1928), 28.

[7] The new states of Central Europe which arose on the break-up of the old Austro-Hungarian monarchy.

[8] Some estimate the number still remaining as high as 30,000,000 or more. H. W. Harris, *What the League of Nations Is* (1927), 117.

[9] See Noel Buxton and T. P. Conwil-Evans, *Oppressed Peoples and the League of Nations* (1922), Ch. IV, for further details.

[10] *Op. cit.*, 180.

[11] Buxton and Conwil-Evans, *op. cit.*, 81–82.

II. The Minorities Treaties

While the Conference might have still further reduced the minorities population of Europe, by no possibility could it have been entirely eliminated. Recognizing this source of international trouble, and desiring to promote more humane and equitable treatment of minorities as a matter of justice, the Peace Conference worked out a system of international conventional law and procedure for the protection of minorities which, inadequate as it may turn out to be, marks a distinct advance, both in theory and practice, over previous methods of handling the problem. Following is an outline of the plan.

During the Peace Conference six special treaties were signed, now known as the Minorities Treaties, between the Principal Allied and Associated Powers, on the one hand, and Poland, the Kingdom of the Serbs, Croats, and Slovenes (Jugo-Slavia), Czechoslovakia, Roumania, Greece, and Armenia, on the other. The substance of these treaties, in so far as they related to minorities, was also embodied in special chapters of the general peace treaties with Austria (Treaty of Saint-Germain), Bulgaria (Treaty of Neuilly), Hungary (Treaty of Trianon), and Turkey (Treaty of Lausanne), signed in 1923).[12] Moreover, the principles of these minorities treaties have been accepted, more or less completely and explicitly, by the new Baltic states — Estonia, Finland, Latvia, and Lithuania — and by Albania; and have been incorporated into two international conventions: The Polish-German convention concerning Upper Silesia, and the convention concerning the Memel territory.[13] The stipulations of the general peace treaties and of the special treaties and conventions, relating to minorities, as well as the declarations made by the New Baltic States and Albania, are placed under the guarantee of the League of Nations.

In proposing these treaties it was pointed out by M. Clemenceau, on behalf of the Peace Conference, that they did not inaugurate any new departure, in principle; that it was established European procedure, when a new state was created, or when an existing state absorbed any considerable amount of territory, for the Great Powers to request the government of the new or enlarged state to undertake to apply certain definite principles of government in the form of an agreement of an international character. For the first time, however, there exists a permanent international agency charged with the responsibility of seeing to it that the states undertaking to apply these principles actually do so in good faith. It is this feature of the new system of minorities protection which distinguishes it from the earlier procedure. It was not the purpose of its originators to extend it to all minorities, even in Europe, but rather to facilitate the solution of minorities problems in certain countries where it was anticipated that they might become particularly acute. However, it is an international experiment on a scale wide enough to afford a satisfactory test of its merits.

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[12] See Rosting, *op. cit.*, 646–648.

[13] *League Information Handbook on Protection of Minorities* (Rev. Ed., 1927), 6–8; Rosting, *op. cit.*, 649.

Guarantees of the Minorities Treaties

The guarantees of the minorities treaties fall into two classes. Those of the first class are extended to all inhabitants of the state, regardless of citizenship, and embrace full and complete protection of life and liberty, and the free exercise of any creed, religion, or belief whose practices are not inconsistent with public order or morals. It is to be observed, however, that the League guarantees the observance of these treaties only as to individuals belonging to racial, religious, or linguistic minorities. The League has no concern with local policies which do not infringe upon these fundamental rights of individuals belonging to such minorities. The guarantees of the second class relate only to nationals of the country, and embrace equality before the law, equality in the matter of civil and political rights, and equality of treatment and security in law and fact.[14]

The treaties further stipulate, among other things, that differences of race, religion, or language shall not prejudice any national of the country as regards admission to public employments, engaging in industries and professions, and establishing and maintaining charitable, religious, social, and educational institutions. As to the use of the minority language the guarantees are ample. No restrictions may be imposed on the free use by any national of any language in private intercourse, in commerce, in religion, in the press, or in publications of any kind, or at public meetings. The government is obliged to grant nationals speaking a language other than the official language adequate facilities for the use of their language, either orally or in writing, before the courts; and in towns and districts where there is a considerable proportion of nationals speaking a language other than the official language of the state, to insure that in the primary schools the instruction shall be given to the children of such nationals in their own language, and that they shall have an equitable share in the application and enjoyment of public funds devoted to religious, charitable, or educational purposes.[15]

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[14] See C. de Visscher, *op. cit.*, 37 ff.

To clear up questions growing out of changes in nationality resulting from the territorial readjustments made by the Peace Conference, the minorities treaties contain provisions regulating the acquisition of nationality in a newly created or enlarged country. The general rule adopted was that persons habitually resident in the transferred territory, or born there of parents who were habitually residents, would be held to have acquired the nationality of the new or enlarged state; but persons over eighteen years of age were at liberty to elect any other nationality open to them within two years after the treaties came into force, being obliged to leave the country within twelve months after the exercise of such option.

III. League Procedure Under the Treaties

How is the League guarantee of these treaties made good? In the first place, the treaties provide that the stipulations therein affecting racial, religious, and linguistic minorities shall be deemed to constitute obligations of international concern and shall be placed under the guarantee of the League, thus expressly bringing them within the jurisdiction of the League. What this means, in practical effect, is that whereas intervention by outside powers in behalf of an oppressed minority might ordinarily be deemed an unfriendly act, and might even precipitate war, under this provision it becomes the unquestioned right of the League to intervene when circumstances seem to require it.

In the second place, the treaties provide that any member of the Council of the League shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances. In the third place, the treaties stipulate that any difference of opinion as to questions of law or fact arising under their provisions between any of the several governments and " any one of the Principal Allied and Associated Powers or any other power, a member of the Council of the League of Nations," shall be held to be a dispute of an international character under Article XIV of the Covenant of the League of Nations, which shall be referred to the Permanent Court of International Justice for final decision, on demand of the power concerned. Under this provision two questions have been submitted to the Court, one in the so-called " Polish Settlers' Case," and the other dealing with a question of nationality under the Polish minorities treaty.

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[15] The importance of these language guarantees can be appreciated only in the light of the rigid, galling restrictions upon the use of the minority language which have characterized the policies of assimilation heretofore pursued against many European minorities, notably against the Poles in Russia and Austria.

The provision which in terms limits to states members of the League Council the right to call to the attention of the Council " any infraction, or any danger of infraction " of any of the obligations assumed in behalf of minorities under these treaties, seems to restrict unduly the right of minorities to bring alleged infractions of the treaties before the Council. This would be true, indeed, if the jurisdiction of the Council could be invoked only on the initiative of one of its members, but such is not the fact, in practice. The Council has adopted a procedure more liberal towards minorities than the literal terms of the treaties, a procedure whereby minorities may appeal to the League by means of petitions, and at least be assured that their complaints will be considered by a competent body acting in behalf of the League.

Petitions for Redress of Grievances

This rather roundabout procedure is intended to safeguard the essential rights of minorities, while avoiding the disadvantages and hazards to friendly relations between governments incident to direct appeals by minorities to foreign powers. An aggrieved minority may transmit a petition for redress to the League Secretariat. It is forthwith given preliminary examination by the Minorities Section of the Secretariat for the purpose of determining whether or not it can be accepted. This decision, ultimately made by the Secretary-General of the League, depends upon whether the petition meets the conditions prescribed by the Council. These conditions are as follows: (1) That the petition must not emanate from an anonymous or unauthenticated source; (2) that it must not be worded in violent language; (3) that it must have in view the protection of a minority in accordance with the treaties; (4) that it must not be submitted in the form of a request for the severance of political relations between the minority in question and the state of which it forms a part; (5) that it must contain information or refer to facts which have not recently been the subject of a petition. These conditions are reasonable and wholesome. For the Council to give attention to petitions of an intemperate or propagandist character, for example, or to such as seek to further a movement for independence, would be to undermine its influence in behalf of minorities, and to jeopardize the whole scheme. In practice another necessary condition has been imposed — namely, that petitions must be detailed enough in their statements of fact to apprise the Council of the specific grievances of which the minority complains. Occasionally petitions have been found too general, too meagerly supported by facts, to warrant consideration.

If the petition passes muster it is communicated to the state concerned, which may submit its observations on the petition within a stated period. It is then communicated, with such comment as the interested state may choose to make, to the members of the Council, and also to other members of the League or to the general public, either at the request of the government concerned or by direction of the Council. On reaching the Council the petition passes to a committee known as the " Minorities Committee," consisting of the Acting President of the Council and two members appointed by him, there being a separate committee to deal with each petition. The composition of this committee is regulated by the Council so as to be as detached and impartial as possible. It is aided in its examination of the case by preparatory work done by the Minorities Section of the Secretariat on the questions of law and fact involved. It may correspond with the interested government with a view to removing the causes of complaint or promoting better understanding between it and the complaining minority; and in this way local abuses may be corrected and minor grievances considered without publicity and without appeal to the Council as a whole. Strictly speaking, the aim of the Minorities Committee is to determine whether one or more members of the Council should bring to the Council's attention an infraction or danger of infraction of any of the treaty obligations assumed for the protection of minorities.

IV. Practical Results of League Protection

Under the procedure outlined above numerous cases have been examined by the Minorities Committees of the Council. The aim is to deal with minorities problems, often delicate and difficult, in a spirit of conciliation. Grave violations of the minorities treaties necessarily call for action by the Council in the exercise of its plenary power; but in ordinary cases friendly relations between minorities and their governments can best be promoted by the tender of good offices and benevolent counsel through informal communications. Says Harris:

> Abuses are constantly due to the arbitrary administration by some official in a province distant from the capital, and the central government is commonly ready to intervene when its attention is called to the trouble by private representations from Geneva.[16]

The Council has had occasion to deal in a more formal way with numerous questions arising under the minorities treaties, in all of which it has succeeded in effecting a settlement by agreements with the governments concerned — aided in two cases, as already stated, by advisory opinions from the Permanent Court of International Justice. The efforts of the Council and its committees to effect adjustments are very materially furthered through the agencies directed by the Minorities Section of the Secretariat.

Questions Dealt With by the Council

Among the questions thus dealt with by the Council may be mentioned, by way of illustration, several concerning minorities in Upper Silesia. One was presented by petitions from German minorities relating to the facilities provided by the Polish government for elementary, secondary, and higher education; another, presented by the Association of Poles in Germany, involved the claim that the laws in German·Upper Silesia discriminated against the Polish minority in respect to damage caused by riots and other acts of violence; another concerned the alleged rejection of German school children entered for the primary German minority schools in Polish Silesia.

The Council has also dealt with petitions from minorities in Hungary involving alleged discrimination in the admission of students to Hungarian universities and higher educational institutions; from the Polish minority in Lithuania embodying such points as the exclusion of minority members from commissions of the Diet, the employment of minority languages in churches and schools, etc.; and from Hungarian minorities in Roumania, who complained that they were in danger of having their lands expropriated with insufficient compensation and on a larger scale than other Roumanian subjects.

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[16] *Op. cit.*, 119.

In one form or another the status of Greek minorities in Bulgaria and Turkey, and of Bulgarian minorities in Greece, has been before the Council on several occasions. So also German minorities in Poland have taken to the Council two questions of considerable importance and difficulty. One was the so-called German Settlers' case, which involved the right of the Polish government to expel from their lands certain German settlers resident in territory which passed under the Peace Treaty from Germany to Poland. The claim of the Polish government was that by force of the treaty title to these lands vested in the Polish state, and a law was passed cancelling the titles of the German occupants. The Permanent Court of International Justice, at the request of the Council, rendered an advisory opinion holding that the policy of Poland was not in conformity with her international obligations. Thereupon the Polish government agreed with the Committee of the Council to pay a lump sum as compensation to the German settlers. The other question concerned the acquisition by German settlers of Polish nationality under the Polish minority treaty. The Permanent Court of International Justice rendered an advisory opinion interpreting the treaty on this point, and subsequently the Polish and German governments accepted an arbitral award which ended the controversy.[17]

Difficulties Involved in Minorities Disputes

It is to be observed that in undertaking the protection of minorities the League exercises authority derived, not from the Covenant but from treaties under which this task is imposed upon it. The responsibilities thus assumed are of the utmost importance, having regard both to the welfare of the minorities themselves and to the peace of the world. If the action of the Council in handling minorities questions has not always been characterized by vigor, it must be remembered that the difficulty of reaching just conclusions is often very great, owing to the complicated states of fact presented, and especially to the fact that there may be a measure of right and wrong on both sides. A minority may be as unreasonable in its attitude as the dominant state is arbitrary in its treatment; by no means is all the fault always on the side of the latter. This was recognized by the Third Assembly of the League, in 1922, in the adoption of the following resolution:

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[17] For a review of the work of the Council regarding the protection of minorities up to December, 1927, see *League Information Pamphlet on the Protection of Minorities,* Ch. IV.

> While the Assembly recognizes the primary right of the minorities to be protected by the League from oppression, it also emphasizes the duty incumbent upon persons belonging to racial, religious, or linguistic minorities to co-operate as loyal fellow-citizens with the nations to which they now belong.[18]

The Assembly went on to say that the Secretariat of the League, in collecting information concerning the manner in which the minorities treaties are carried out,

> should not only assist the Council in the study of complaints concerning infractions of these treaties, but should also assist the Council in ascertaining in what manner the persons belonging to racial, linguistic, or religious minorities fulfill their duties towards their states.

Another complicating factor is that minority problems, involving as they often do the good faith of the dominant state, touch rather acutely the point of national sovereignty, as to which modern states are highly sensitive — and none more so than those which have not achieved a settled and secure position in the family of states. For this reason it is a delicate matter for a state to espouse the cause of a minority, and thus risk the friendship of the state against which complaint is directed. It is noted that of late a rather larger number of cases have been dealt with publicly, indicating apparently that the Council recognizes the value of publicity as a steadying influence upon governments in dealing with their minorities. So also, governments which are trying to fulfil their obligations conscientiously find it advantageous to vindicate themselves by publishing the methods adopted by them to that end. It has been suggested that greater publicity might well be given both to moderately stated minority appeals and to the replies and explanations of governments.

Proposed Changes in Council Procedure

Recently there has been manifest dissatisfaction with the procedure followed by the Council in dealing with minorities questions. The matter was fully considered at the March, 1929, session of the Council in Geneva, not only as one of formal procedure but as regards the general attitude of the League towards minorities. It appeared in the discussions that the League method outlined above for the consideration of complaints from minorities has not been satisfactory to them, as it has left them under the impression that their complaints are not heard, or at least are treated with indifference by the Council;

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[18] *Ibid.*, p. 26.

and if heard, that they are left in ignorance as to what action, if any, has been taken.[19] At its March meeting the Council set up a committee to report on the whole matter, and the report of this committee was before the Council at its Madrid session in June, 1929.[20]

The result was the adoption of certain modifications, as to details, in the procedure previously followed. One relates to the composition of the Minorities Committees and the frequency of their meetings; another charges the Committees with the duty of communicating to the other members of the Council the results of their examination of questions which are not formally brought before the Council. So also the Committees are urged to consider the possibility of publishing, with the consent of the governments concerned, the result of the examination of questions submitted to them; and provision is made for the publication in the Official Journal of the League of statistics concerning petitions received by the Secretariat, and the disposition thereof made by the Committees.[21] It is not likely that these changes will satisfy the minorities, or will settle the issues raised at the March session of the Council.

It probably cannot be said as yet that minorities falling within the provisions of the minorities treaties are adequately protected by the League; but it is true that they enjoy a right of appeal to an international tribunal charged with the duty of entertaining their complaints and affording relief in proper cases. Like the natives under mandate they are assured a forum in which to air their grievances; and this privilege in itself works to their advantage.

Measures to Facilitate Settlement of Disputes

The League machinery for dealing with minorities complaints could be strengthened by increasing the facilities of the Council for securing first-hand information. To this end the appointment of League Commissioners to live in areas of friction between minorities and their governments, has been proposed. It was fully discussed at the Third Assembly, but failed of unanimous adoption. Again the system could be strengthened, doubtless, by setting up local agencies to hear complaints and get at the facts, thus facilitating decisions by the Council in cases where the local authorities cannot reach satisfactory adjustments. More direct and expeditious action could be secured in this way, and the Council relieved of some embarrassing cases. This plan was adopted by Poland and Germany in Upper Silesia, where a Minorities Office to deal with complaints was set up on each side of the frontier, under a convention entered into in 1922. If a complaining minority cannot get satisfaction from its Office, the case passes to a mixed conciliation commission, and thence, as a last resort, to the Council of the League.[22] Because of the demonstrated value of the Permanent Mandates Commission in dealing with native grievances, a Minorities Commission has been proposed, so selected as to bring to bear upon minorities problems a high degree of technical knowledge and practical experience, and a disinterested zeal in their solution. There seems to be no legal objection to such a commission, assuming, of course, that like the Mandates Commission it were given advisory functions only, and subjected to the ultimate jurisdiction of the Council.

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[19] An Annex to the *Monthly Summary* for April, 1929, contains interesting extracts from the minutes of the Council meetings covering its discussion of the protection of minorities.

[20] Referred to as the London Report, which gives a full résumé of all actions taken by the Council and the Assembly relating to procedure on questions concerning the protection of minorities.

[21] See *Monthly Summary* for July, 1929, Annex.

It is unfortunate that the protection of the League, conceding its inadequacy, does not extend to all European minorities. None of the great powers, with the exception of Germany in Upper Silesia, entered into minorities treaties at the close of the war, although two of them — France and Italy — and some smaller states, received territory inhabited by aliens who thus became minorities. This discrimination could be defended on grounds of political expediency, but not from the standpoint of justice or the general welfare of Europe. It has already resulted in a dangerous situation in the Trentino, an area inhabited by Germans, set off to Italy as already noted. It may reasonably be expected, however, that the principles and methods developed in dealing with minorities under the guarantee of the League will inure in some measure to the benefit of those denied its protection.[23]

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[22] Buell, *op. cit.,* 195–196.

[23] For religious aspects of the minorities problem see article on "Post-War Oppression of German Sects in Foreign Countries," XXIV *Current History,* 43 (1926).

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CHAPTER XXV

LEAGUE ADMINISTRATION: GOVERNMENT OF THE SAAR BASIN — FREE CITY OF DANZIG

I. THE SAAR ADMINISTRATION

The League inherited some of its most perplexing problems from the war settlement, among them being the controversies arising under the minorities treaties, just discussed. An equally difficult piece of work was entrusted to it in the disposition of the Saar Basin made by the Peace Conference.[1] This area of some seven hundred square miles, which lies on the frontier between France and Germany north of Lorraine, formerly a part of Germany and overwhelmingly German in population, was desired by France, particularly on account of its rich coal mines. To have given it to France, however, would have been to do violence to the principle of self-determination and thus to create a dangerous minority — another Alsace-Lorraine. Hence the Conference worked out a compromise plan for the disposition of the territory, the main features of which were as follows:

1. Germany ceded to France the Saar coal mines, "in full and absolute possession," chiefly as compensation for the German destruction of the coal mines in the North of France. The Saar mines are not under the administration of the League, but directly under that of the French government.

2. Germany renounced in favor of the League of Nations, as trustee, the government of the area, under provisions set forth in some detail in the Saar Annex to the Versailles Treaty.

3. Provision is made in the treaty for a plebiscite, to be held in 1935, whereby the population shall decide whether the territory, or certain parts of it, shall continue under the League, or be united with France, or return to Germany.

4. In accordance with the provisions of the treaty the territory is governed by a Commission of five, appointed by the Council of

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[1] The following summary on League administration in the Saar Basin and the Free City of Danzig is taken mainly from the *League Information Pamphlet* on these subjects.

the League of Nations, and sitting in the territory as the representative of the League. This Commission must include a citizen of France, one native inhabitant of the Saar not a citizen of France, and three members belonging to three countries other than France or Germany.[2]

Powers of the Commission

The Council may revoke appointments to the Commission, and thus may indirectly control its policies. Under the treaty the Commission was given " all the powers of government hitherto belonging to the German Empire, Prussia or Bavaria." This broad grant includes the power to appoint and dismiss public officials, create the necessary administrative machinery and representative bodies, administer the transportation and other public services, levy taxes and duties, set up civil and criminal and appellate courts, and decide questions involving the interpretation of those parts of the treaty applicable to the Saar. The treaty provisions do not affect the nationality of the inhabitants. So also, existing laws, the fiscal system, and the existing civil and criminal courts were to be maintained unless in certain cases the Commission found it necessary to make changes. Subject to the jurisdiction of the Commission the inhabitants are permitted to retain their local assemblies, to enjoy religious freedom, to maintain their schools, and to use their language.

Administrative Problems of the Commission

The Governing Commission has encountered serious difficulties in the administration of the Saar. One was inherent in the situation. To the inhabitants the Commission represented an alien government imposed upon them by the victorious allies. The German population, knowing that France coveted the German Rhine Provinces at the Peace Conference, readily persuaded themselves that the League régime was merely " disguised annexation." It was too much to expect that they would whole-heartedly coöperate with the Commission, especially in view of the fact that the treaty gave them no voice in its determinations. The Commission is responsible, not to any parliamentary body in the Saar, but to the League of Nations. True, the Commission is required to secure the views of the elected representatives of the district before changing the laws or imposing new taxes, but is under no obligation to adopt them. At first this was done by consulting the municipal and district councils in the area, but in 1922 the Commission established an Advisory Council of thirty representatives elected by all the inhabitants of the territory. Although this Council and the Commission frequently differ, the former has been helpful in suggesting measures of local administration.

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[2] Thus the majority of the Commission, which under the treaty reaches its decisions by majority vote, theoretically views policies from a neutral and impartial standpoint.

Again, in view of the possibility of a decision, by the plebiscite of 1935, to remain under the control of the League — a decision not likely but rendered possible by the fact that thereby the Saar would not be burdened with any part of the German reparations — there has been a disposition on the part of those desiring ultimate union with Germany to discredit the Commission and its work, so far as possible. This has been natural, especially in view of the assurance felt by the inhabitants that they could rely upon the moral support of Germany. Moreover, the work of the Commission, especially during the early years of its administration, was under French influence because of the pro-French character of its personnel; and the fact that the treaty placed the territory under the French customs régime, subject to certain temporary stipulations regarding trade between the Basin and Germany, and also gave France the right to use French money in connection with the operation of the coal mines, the chief industry of the Saar, tended to heighten the feeling against the Commission. This attitude of suspicion has been justified, apparently, by some policies adopted by the Commission.

But with the best of intentions the task of the Commission has been a difficult one. Says Professor F. M. Russell:

> It must carry out the rigorous terms of the Treaty of Versailles, co-operate with the French in their exploitation of the coal mines, support France in other measures of economic penetration allowed her by the treaty, and yet convince the inhabitants that it was governing in their interest.[3]

League Control How Exercised

The League trusteeship is effectuated by procedure intended to bring the work of the Commission under the supervision of the Council. The Commission submits quarterly reports to the Council, which are circulated to the members of the League and printed in the Official Journal of the League; it also sends in special reports from time to time. The inhabitants of the Saar have the right to send petitions to the Council through the Commission and have done so on numerous occasions, rigorously criticizing its policies. So also, the German government has preferred a considerable number of complaints to the Council having reference to conditions in the Saar territory or to actions taken by the Commission. Perhaps the chief ground of complaint has been the maintenance of French troops in the territory — an irritating policy objected to by Germany as being in violation of the treaty and incompatible with the project of a plebiscite in 1935, but defended by the Commission as a measure necessary in the performance of the duty imposed upon it by the treaty to provide for the protection of persons and property in the Saar Basin.

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[3] "The Saar Basin Governing Commission," 36 *Pol. Sci. Quar.*, 169 at p. 175 (1921).

The Commission has been unfortunately handicapped in many ways, but on the whole the administration of the Saar appears to have been fairly well managed. It probably could have been bettered if the treaty had given the League a free hand in the creation of its administrative machinery and the establishment of administrative policies. The District has prospered — more, perhaps, than Europe as a whole. Its railroads have been operated with considerable success, its budgets have been balanced, unemployment has been almost negligible, and in general, it has enjoyed favorable economic conditions.

II. Free City of Danzig

The Treaty of Versailles charged the League of Nations with another piece of administrative work akin to the government of the Saar Basin. Just as the Saar plan was a compromise between competing interests, so the creation of the Free City of Danzig, under the supervision of the League, represented the solution of a difficult territorial question.

A Poland created by the union of the three interior sections of old Poland — Austrian, Russian, and German — would have been a Poland without access to the sea. Landlocked states are so handicapped in commercial competition with states possessing seaports, that the Polish demand for free access to the Baltic was recognized as legitimate. The problem was a knotty one, for two or three reasons. Danzig, a city of some 200,000 inhabitants, seated at the mouth of the Vistula river, was the natural Polish seaport, the Vistula being the chief artery of commerce for the hinterland of the new Poland. When the Conference decided to give Poland access to the

Baltic by way of a belt of territory, or corridor, flanked on either side by Germany, the question arose whether this corridor should include Danzig. If the corridor did not embrace Danzig, then Poland would still lack her natural seaport; on the other hand, if it were broadened to include Danzig, the result would be the transfer to Poland of a thoroughly German city, a violation of the right of self-determination, and the creation of an alien minority in the body of the Polish state.

To escape this dilemma the Conference severed Danzig from Germany but without joining it to Poland. It was constituted a Free City under the protection of the League of Nations, and given the self-governing rights which it formerly enjoyed; while Poland was guaranteed certain rights therein, as regards such matters as railways, the postal, telegraph and telephone service, the customs service, and the use of the port. The City was officially created by a declaration of the Principal Allied Powers under the Peace Treaty, and came into existence in November, 1920. At the same time a treaty between Poland and Danzig, regulating their relations pursuant to the Versailles Treaty, also went into effect. The Free City adopted a constitution and organized a government thereunder.

Functions of League High Commissioner

The supervisory power of the League is exercised by a High Commissioner. It is left in the first instance to the governments of Poland and Danzig to settle differences arising between them, and this they have done as to a wide variety of questions. Such differences as they cannot adjust by direct negotiations are referred to the High Commissioner, from whose decision either party may appeal to the Council of the League. At first both Danzig and Poland appealed on principle from about every decision given, thus troubling the Council with a mass of relatively unimportant questions; but gradually the practice developed of reaching settlements by direct agreement, aided by the mediation of the High Commissioner or the officials of the League Secretariat, leaving only the more important decisions for the Council. The main purpose of the creation of the Free City — the commercial advantage of Poland — is conserved by giving Poland equal representation with Danzig on a Danzig Ports and Waterways Board, which has control of the ports, waterways, and railways of the City, under the presidency of a neutral member. Poland regulates the foreign relations of the Free City.

Such, in brief outline, is this international experiment in international administration. The Free City of Danzig has been declared by the Council to be " a community in the international organization of Europe protected against all undue interference on the part of any country and possessing its own regular existence." In spite of its anomalous political condition, and what might appear to be the handicap of close association with a powerful neighbor, the Free City appears to have prospered commercially.[4]

[4] R. L. Buell, *International Relations* (Rev. Ed., 1929), 130–131.

CHAPTER XXVI

HEALTH ORGANIZATION OF THE LEAGUE[1]

The Covenant of the League of Nations provides that the members of the League " will endeavor to take steps in matters of international concern for the prevention and control of disease."[2] This provision was a definite recognition of the fact that under modern economic and transport conditions, disease has become an international problem of the utmost importance. Just as the enormously increased facilities for travel, whereby the populations of all advanced countries are in constant flux, have profoundly affected the science of public hygiene nationally, so the incessant shuttling of people and goods across international boundaries, and particularly between the great seaports of the world, has necessitated effective measures of international hygiene. Again, this mandate in Article XXIII recognizes the fact that medical science knows no frontiers; its advancement must be along an international front, where the scientists of many countries will be found making united cause against the common enemies of mankind.

Upon the provision of the Covenant above cited has been built the Health Organization of the League, which must be described in some detail as one of its outstanding achievements. It should be recalled, however, that the League was not the pioneer in this field. As previously stated, an international organization — the International Office of Public Hygiene[3] — was set up in Paris in 1907, to deal with the international aspects of disease. This organization now functions in coöperation with the League health service, as will appear presently.

The Temporary Epidemic Commission

The work of the League Health Organization has concerned three sets of problems, generally speaking: (1) Measures to prevent and control epidemic diseases; (2) investigations into the prevalence and causes of certain other diseases, and methods of dealing therewith; (3) as a means of promoting these two major interests, the working out of a system of liaison between the League organization and the health administrations of the different countries, and between these national organizations themselves. It was the first, and most critical, of these problems — that of dealing with epidemics — that confronted the Council of the League at the very outset. In February, 1920, the Council summoned an international conference of health experts to draft a constitution for the Health Organization of the League. It met for that purpose in April, 1920, but found itself faced with the more immediate and critical necessity of planning a campaign against the spread of the fever epidemics which were then spreading from Russia into the new countries of Eastern Europe.

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[1] This summary has been taken largely from the *Annual Reports of the League Health Organization,* the *Information Pamphlet on the Health Organization,* published by the League, and the *Monthly Summary of the League of Nations.*

[2] Art. XXIII, Par. (f).

[3] Officially referred to as the *Office International d'hygiène Publique.*

Postponing the task of organization to a later time, the conference met this crisis by the creation of a Temporary Epidemic Commission, in May, 1920. This commission undertook to aid the countries affected by promoting coöperation between their public health administrations, its work in Eastern Europe continuing until 1923.[4] During this period it rendered important services in the solution of other international health problems, notably those concerning the small pox and other epidemics among the hordes of Greek refugees who poured into Greece after the Greco-Turkish war in Asia Minor. Meantime an international health conference, attended by delegates from twenty-seven states, met at Warsaw in 1922 to consider the grave problem of dealing with the vast numbers of refugees who overran the border states of Russia. The Council of the League put the services of the League Health Organization and Secretariat at the service of the conference. One result of this conference was the conclusion of a number of sanitary conventions between the countries of Eastern Europe. These conventions were designed to strengthen their sanitary defenses and to promote closer collaboration between the respective health administrations.

While the Epidemic Commission was dealing with these emergencies, a provisional health committee was appointed by the Council of the League, some of its members being also members of the International Office in Paris. This Provisional Committee did valuable work, initiating many of the problems later handled by the Permanent Health Committee of the League. In May, 1923, a committee consisting of the members of the Provisional Health Committee and of the Permanent Committee of the Paris Office drafted a constitution of the Permanent League Health Organization which was adopted by the Fourth Assembly of the League.

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[4] *Annual Report of the Health Organization for 1925*, p. 2.

Machinery of the Health Organization

The present Health Organization of the League consists of three parts: (1) The Advisory Council, consisting of the Permanent Committee of the International Office of Public Health at Paris; (2) the Health Committee of twenty members; and (3) the Health Section, forming part of the Secretariat of the League of Nations. The Advisory Council, and the Health Committee, while distinct in function, are partly identical in personnel. The former, constituting the Permanent Committee of the Paris Office, is composed of representatives of the forty-three states which are members of the Office; it meets twice a year, its sessions following those of the Health Committee. The Health Committee of the League is made up as follows: The President of the Permanent Committee of the Paris Office is ex officio a member, and nine other members are elected by that Office; the Council of the League selects six members and appoints four assessors or technical advisers, in consultation with the Health Committee. The Health Committee directs the health work of the League, and is responsible for the technical direction of the Health Section of the Secretariat.

The decisions of the Health Committee take the form of printed resolutions which are transmitted to the Advisory Council for its consideration. These resolutions do not become effective until they have been submitted to and approved by the League Council; and further, the Council will not act on them until advisory opinions have been secured from the Advisory Council. Thus, while the ultimate decision rests with the Council, in practice the Health policies of the League are shaped by the Health Committee and the Advisory Council — really by the former, because it would rarely happen that the Permanent Committee of the Paris Office would advise against a decision reached by the Health Committee, one-half of whose members are also part of its own membership.

Inasmuch as the Health Organization of the League and the Paris International Office work in the same field, it is important that their activities be properly coördinated. To that end an agreement approved by the Council of the League was lately entered into, whereby the Permanent Committee of the Office is given sole competence as to all questions relating to the exercise of certain duties referred to, with an arrangement for the exchange of information on the work of each body, and the publication of such information as is likely to be of interest to the public health administrations of the different countries.[5] This liaison between the League Health Organization and the Paris International Office, even though duplication cannot be entirely eliminated, may have one practical advantage. The Committee of the Paris Office is a body of governmental representatives from many countries, who by reason of their official character naturally form connecting links between the Health Committee of the League and the governments of the member states which they represent.

League Control of Epidemics

International hygiene finds its most critical problems, and its greatest field of usefulness, in dealing with epidemics; indeed the crusade against the spread of epidemics is definitely international. While the ease and rapidity of modern inter-communication have intensified the problem, they have also armed medical science with highly efficient weapons wherewith to deal internationally with epidemic diseases. To be effective, however, these weapons must be used coöperatively. No one health administration can deal single-handed with a threatened epidemic; indeed, no government can protect even its own people against the menace without burdensome and ruinous restrictions upon their foreign commercial intercourse. This was demonstrated in the course of events which led up to the establishment of the International Office at Paris.[6]

In the control of a threatened epidemic, time is the very essence of the problem. Like a fire, it may be readily stamped out at its beginning, but once it gathers head the difficulties increase in geometrical proportion; every new foothold becomes a new center of propagation. The success of the League Health Organization in dealing with epidemic diseases has been due very largely to its solution of two problems — or perhaps rather, of one problem with two aspects: First, the establishment of an intelligence service sufficiently complete and comprehensive to keep it in constant touch with conditions in all parts of the geographical areas likely to give rise to, or be affected by, epidemic diseases; and second, the speeding up of this service so that information as to conditions anywhere may be made almost instantly available wherever needed.

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[5] See *Annual Report of the Health Organization for 1927*, p. 13.

[6] For a sketch of this development see L. S. Woolf, *International Government* (1916), 221 ff.

International Health Publications

One of the first tasks undertaken by the Health Section of the League was that of collecting and tabulating all available information in regard to the prevalence of certain epidemic diseases in Eastern Europe, where the situation was critical. This information was published in several volumes covering the years 1921 and 1922. In the latter year the Rockefeller Foundation granted the Health Committee financial aid in developing its epidemiological intelligence service, beginning with the year 1923, and this subvention has since continued. The steps successively taken to publish the work of this service are suggestive. In 1923 the first annual report was published on what are called "notifiable diseases"; and the first monthly report on the occurrence and prevalence of such diseases was issued in July of that year. The material for these reports is furnished voluntarily by the public health services of the various countries and cities wherein such information is available. In 1925 the Committee began the publication of an International Health Year Book, which contains a comprehensive report on the public health progress of many countries. The Year Book for 1927 is a volume of 800 pages and covers reports from twenty-seven countries, treating such subjects as birth and death rates, infant mortality, public health budget, developments in health administration and legislation, campaigns against the so-called social diseases, curative medicine, water supply, sewage, hygiene of dwellings and schools, physical culture, etc.

In April, 1926, the publication of a weekly report was begun, designed to acquaint health administrations with the movement and prevalence of plague, cholera, yellow fever, typhus fever, small pox, and any other epidemic disease prevalent at the time. This weekly record is made up in part of telegraphic reports from widely separated parts of the world. Alexandria is a point of great epidemiological importance, being the seat of the Maritime Sanitary and Quarantine Council. The President of this Council sends regular telegraphic reports as to health conditions among the pilgrims during the Hedjaz pilgrimage, and early information regularly on conditions in Iraq and along the Persian Gulf.

Establishment of Far Eastern Bureau

In 1925 the League Council, on the recommendation of the Health Committee, took an important step in deciding to establish a Far Eastern Bureau for the receipt and dispatch of epidemiological information. The organization and work of the proposed Bureau were considered at an international conference held at Singapore, and on March 1, 1925, the Bureau started work there. Its main function is to keep in constant touch with the different health administrations in the Far East, gathering from them epidemiological information and disseminating it in a weekly code despatch, by cable or wireless, to these administrations and to Geneva.

Particular attention is thus given to the receipt and dissemination of weekly telegraphic epidemiological information, and in regard to the movement of infected ships. During 1927 the Bureau was in weekly telegraphic communication with 140 ports scattered throughout the Indian and Pacific oceans, from Alexandria and Cape Town on the West to the Panama Canal Zone on the East. A particular feature is now being made of transmitting the weekly bulletin by wireless, the policy being adopted of having the message broadcast in code by the more powerful broadcasting stations, to be picked up by the stations of lesser range and transmitted in full for the benefit of shipping at sea. Of special importance is information regarding the movements of infected ships. In 1927 the Bureau had an agreement with thirty-five Far Eastern Health Administrations to notify it of the arrival of infected ships at their ports. The number of ships notified during the first eleven months of the year as having infectious diseases on board was 162. This information is at once transmitted to the health administrations concerned. The great value of this service is apparent at a glance. To illustrate: The Bureau receives, through the Sanitary, Maritime, and Quarantine Council at Alexandria, full information in regard to the Hedjaz pilgrimage. In 1927 the disbandment of pilgrims coincided with an outbreak of small pox at Jeddali, and as a result eighteen pilgrim ships were notified to the Eastern Bureau as being infected with small pox on their arrival at various ports between July and September.

An interesting service has lately been rendered by the Health Organization in working out plans for the sanitary reorganization of Greece. This was done at the request of the Greek Government, through a Commission set up by the Health Organization to make the preliminary surveys on which the reorganized service will be based.[7] In the gradual development of the scheme thus initiated, the League Health Organization has placed all its technical facilities at the service of the Greek government.

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[7] See *Monthly Summary* for June, 1929, 184 ff. An American expert served on this Commission.

Coördination in Public Health Work

The effort of the Health Organization to secure coördination in dealing with epidemic diseases has been extended to other health questions of international concern. It became evident that the progress of medical science as an international interest depended upon greater uniformity in statistical methods in the various countries; and thus the organization of the various national health services, and standardization of the different systems for collecting and tabulating medical statistics, became a matter of international concern. To secure greater uniformity a campaign of education has been maintained, in which experts in the different fields have made special studies; and medico-statistical officers in the different countries have been brought together in conferences.

So also, a system of interchanges of the public health personnel of the different administrations has been inaugurated, whereby health officers are enabled to study methods of dealing with health problems in different countries. Such interchanges have been held in most of the European countries, in South and Central American countries, and the United States, Canada, West Africa, and Japan. Practically all countries, including non-members of the League like the United States, Russia, and Turkey, take part in these exchanges. During 1927 this system of liaison took form in the organization of international courses of advanced training in public health and hygiene. Two such courses were held, the first in Paris, the second in London. Early in 1928 there was an interchange in India of public health officers from the health administrations of Far Eastern countries.

In view of the number, and the more or less technical character, of the subjects engaging the attention of the League Health Committee, it has set up a group of technical organizations to act in an advisory capacity. They study the problems arising each in its special field, and submit proposals to the Health Committee for its consideration.[8] These commissions consist of five or more members, with whom are associated, in the case of several of them, a number of corresponding members and experts, thus assuring the coöperation of the foremost authorities drawn from many centers of medical research and learning. One of the most important inquiries being conducted by the League concerns infant mortality. Inaugurated in 1926, it has already taken wide scope. Conferences of experts have been held in Geneva, Paris, and Montevideo. The commission has organized a thorough inquiry, extending over a period of twelve months, in a number of selected areas, in seven European countries and in the Argentine Republic, Brazil, and Uruguay, to obtain accurate and detailed information on the various aspects of infant mortality, as the basis of preventive medicine in this field, the importance of which is being more and more recognized.

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[8] These commissions include a joint commission for the study of the relationship between public health services and health organizations, a cancer commission, a small pox and vaccination commission, an international sleeping sickness commission, a malaria commisson, a commission on education in hygiene and preventive medicine, and an opium commission.

The number and character of these commissions strikingly illustrate the wide range of the medical subjects deemed sufficiently international in character and importance to warrant coöperative study. It is not too much to say that the health activities of the League constitute the greatest coöperative effort ever made in the field of public hygiene. It is noteworthy that the League organization coöperates on questions concerning public health with the Pan-American Sanitary Bureau, the Red Cross, and the International Labor Office, and with other League bodies such as the opium, mandates, and economic committees.[9]

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[9] For a general review of the work of the League Health Organization see D. P. Myers' *Ninth Year Book of the League of Nations* (1920–1928), 98 ff. See also a series of papers on "International Coöperation for the Promotion of Public Health and Social Welfare," in *Proc. of the Acad. of Pol. Sci.* (1926), Vol. XII, No. I, Part VII.

CHAPTER XXVII

LEAGUE SOCIAL AND HUMANITARIAN WORK

The primary aim of the League of Nations is generally understood to be the promotion of international peace. In a broad sense this is true; but its activities are by no means confined to measures having as their direct end the prevention of war. The general purposes of the League are declared in the preamble to be "to promote international coöperation, and to achieve international peace and security" by certain prescribed principles of action. Construed literally, it would appear that international coöperation came first in the minds of the framers of the Covenant; at any rate, they obviously deemed it one of the legitimate activities of the new organization, regardless of its direct effect upon international peace and security.

Having regard to the deeper causes of war — international aloofness and suspicion, attitudes of mind on the part of statesmen, and conflicts of national interest growing out of hasty and often mistaken interpretations of the policies of governments — it cannot be doubted that international peace is effectively promoted by whatever unites the nations in coöperative efforts to promote their common interests. Indeed, it may well turn out that the League will make its greatest contribution to world peace through its non-political activities. True, the bulk of the Covenant consists of provisions dealing directly with the prevention of war — the settlement of international disputes through the intervention of the League, the control of the private traffic in arms and munitions of war, and the reduction of armaments by common agreement. But Article XXIII opens up a broad field of coöperative action having no immediate relation to the problem of peace and security. Under it the members of the League undertake, subject to the provisions of existing or future international conventions:

(1) To endeavor to secure and maintain fair and humane conditions of labor for men, women, and children, both in their own countries and in all countries to which their commercial and industrial

relations extend; and for that purpose to establish and maintain the necessary international organizations.[1]

(2) To secure just treatment of the native inhabitants of territories under their control.

(3) To entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs.

(4) To entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest.

(5) To make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all members of the League.

(6) To endeavor to take steps in matters of international concern for the prevention and control of disease — an understanding fulfilled by the creation of the Health Organization described in the previous chapter.

A Distinctive League Interest

The importance of these provisions entitles them to full consideration; for a very substantial part of the practical work of the League has been done pursuant to the authority thereby conferred; while much of the machinery of the League has been elaborated to promote the social and humanitarian ends thus stated.

It is worth while to note regarding the non-political activities of the League in general, first, that they are not new aspects of international life; and second, that they serve to illustrate the wide scope for useful coöperation between modern nations in non-competitive fields. As to their novelty, it will appear that with the exception of the League's work in the promotion of intellectual coöperation, and the special humanitarian problems remaining at the close of the World War, governments have for some years been dealing with the tasks imposed by Article XXIII of the Covenant. So also, non-governmental international organizations, and private national agencies, have been active in these various fields. What characterizes these activities of the League is, that permanent international agencies have been set up to deal with conditions requiring constant study and supervision; and further, that the work of all these agencies is coördinated and unified in one inclusive organization, world-wide in scope and adequately equipped.

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[1] The latter part of this undertaking has been met by the establishment of the International Labor Organization, discussed in Ch. XXXV.

Necessity of International Coöperation

Again, it will be observed how international are the activities contemplated by Article XXIII. This is obvious as regards such problems as the prevention and control of diseases communicable through the channels of commerce, freedom of transit and communications, and the like. It is less obviously true of some other interests. Take, by way of illustration, the problem of the maintenance of just and humane conditions of labor. It is primarily national; but in view of the growing solidarity of labor, and the competitive conditions which prevail in modern industry, a considerable and gradually increasing degree of international regulation of some aspects of labor has become necessary if the workers are to be adequately protected. A single state may adopt what it deems to be effective measures to combat certain evils, only to find that its policies are largely defeated by the failure of neighboring states to adopt similar measures. This is especially true of evils like the traffic in opium and other dangerous drugs, which involve transactions commonly prosecuted across state lines. Thus no single state has full jurisdiction over the entire transaction; it must be dealt with by concerted action, if at all effectively.[2]

Again, effective action in dealing with social evils may require an accumulation of statistical data beyond the resources of any single state. Only by the coöperation of governmental departments and expert investigators over a wide area can facts be gathered affording an adequate basis for remedial action. Finally, the end sought may necessitate simultaneous action at widely separated points — as in dealing with the beginnings or the spread of communicable diseases. In such cases single governments, however well equipped to deal with local situations, have no recourse but to coöperate with other governments within the area affected — which may be a continent, or even a hemisphere.

Two Classes of Problems

The social and humanitarian work of the League has fallen into two general classes, the first concerning interests long recognized as appropriate for coöperative action, such as human slavery, the opium traffic, and the traffic in women and children; the second, more temporary in character, aimed at the mitigation of the hardships which the World War left in its train — the repatriation of the many war prisoners left stranded and without means of returning to their native countries, and the care of the multitudes of Russian and other refugees whom the War, or political upheavals resulting from the War, left homeless and destitute in foreign lands. Tasks in the former class were for the most part expressly committed to the League by the Covenant; those bequeathed by the War have been taken up by the League in accord with the spirit of the Covenant and as the only adequate means of dealing immediately with the critical situations presented.

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[2] Students of American Government are aware of similar difficulties in the administration of the criminal law in the United States owing to the independent criminal jurisdiction of the several states.

To handle this work the League has created three different kinds of machinery: First, within the general Secretariat of the League, a section for humanitarian and social questions; second, certain permanent organizations outside the Secretariat, such as the Opium Committee and the Advisory Commission for the Protection and Welfare of Children and Young People; and third, provisional organizations such as the High Commissariats for Prisoners of War and for Refugees.

I. The Opium Traffic

The opium traffic has been recognized as an international problem for thirty years or more. The traffic is such as to elude easily the police regulations of any one government. The large profits involved tempt unscrupulous persons into it, while the countries which produce raw opium are naturally reluctant to interfere with a lucrative industry.[3] The international campaign may be said to have taken definite form in 1909, when an international Opium Commission met at Shanghai, on the invitation of the government of the United States, thirteen states being represented. This Commission adopted certain recommendations concerning the traffic, which later formed the basis of the so-called Hague Opium Convention. While the Commission had no power to bind the governments represented, it made a strong appeal to international public opinion by its denunciation of the opium evil.[4]

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[3] Space forbids more than the briefest outline of this important but rather complicated subject. Details will be found in the books and articles cited at the end of the chapter.

[4] For report on the work of this Commission, and relevant treaties and statutes, see Hamilton Wright in 3 *A. J.*, 648, 828 (1909).

The Hague Convention of 1912

Three years later, in 1912, an international conference was held, again on the proposal of the United States, to draft an international opium convention, since referred to as the Hague Convention of 1912. In this convention the parties each undertook, by effective laws or regulations, to control the production and distribution of raw opium, and thus of opium used by smokers and addicts; also to prevent the export of raw opium to a country prohibiting its entry, and to take measures " for the gradual and effective suppression " of the internal trade in and use of prepared opium, in order to curtail the opium-smoking habit — but " with due regard to the varying circumstances of each country concerned." Something was accomplished by this convention in the war against opium, but it was too vague and general in its provisions, and left too many loopholes of escape for governments not genuinely disposed to further its purposes, to be effective.[5]

This convention was signed by all the countries represented at the first opium conference, and ultimately by twenty-seven others; but securing its ratification proved so difficult that a second international conference, attended by twenty-five states, was held in 1913 to discuss this matter. Still many states refused to ratify, and a third conference was convoked in 1914. This met with more success, but the outbreak of the Great War put an end to all efforts to bring the opium convention into effect. At the conclusion of the war the campaign was renewed, the most important step being the insertion in the Peace Treaties of a provision automatically bringing into force, for each of the signatories, the Hague Opium Convention of 1912. Moreover, continuous attention to the problem was insured by the provision, in Article XXIII of the Covenant, entrusting the League with the duty of supervising the execution of agreements with regard to the traffic, as already stated.

Work of League Advisory Commission

Pursuant to this provision, the First Assembly of the League decided to establish an Advisory Commission on the Traffic in Opium and other Dangerous Drugs. The League also maintains an Opium Section of the Secretariat, the function of which is to perform the secretarial work of the Advisory Committee, and to collect information on the arrangements made in the various countries for carrying out the Opium Convention, on the production, distribution, and consumption of opium and other drugs, and other data necessary to enable the League to exercise general supervision over the execution of the arrangements concluded. The Advisory Committee has been active in the performance of its duties, and has achieved important results. Its efforts have been directed, first, to securing a more effective execution of the Hague Opium Convention of 1912; and second, to formulating a comprehensive policy intended to supplement and strengthen the provisions of that convention. Under the first head it has repeatedly urged the more general ratification of the convention, until its ratification is now practically universal.

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[5] For text of this convention see *Treaties, Conventions, etc., Between the United States and Other Powers*, Vol. III, 3025; also Vol. VIII *W. P. F. P.*, 120.

Again, it sent out to all states a questionnaire on the cultivation, production, and manufacture of opium and other dangerous drugs. The information thus elicited, together with the data received in the annual reports which the governments undertook to send to the League Secretariat, have been deemed the necessary foundation for any effective international policy dealing with the limitation of the production of raw materials from which the drugs are manufactured, or for the control of the traffic in the drugs themselves. The committee has sought to strengthen the system established by the Convention of 1912 by proposing several measures of governmental regulation of the traffic in dangerous drugs. One of these measures, for instance, embodied an importation certificate system, whereby no government should allow the export of any dangerous drugs except on the production by the exporter of a license from the importing state certifying that the drugs in question were required for legitimate purposes. Some forty states have accepted the system, and the large majority of them have put it in force.

But the Advisory Committee envisaged a larger problem than that of giving effect to the Convention of 1912. The root of the drug evil, they concluded, lay in the vast production of the raw materials out of which drugs are manufactured. So long as these materials are produced on a large scale, the drugs will be manufactured and find their way into the world's markets. No system of governmental supervision can entirely suppress a traffic so easily carried on and so enormously profitable. Accordingly the Committee determined upon a policy designed to restrict the production of raw materials to an amount requisite to supply the medical and scientific requirements of dangerous drugs. In essence this policy was embodied in two propositions laid down by the American members of the Committee as follows: (1) The use of opium products for other than medicinal and scientific purposes is an abuse and not legitimate; and (2) in order to prevent this abuse it is necessary to control the production of raw opium in such a manner that there will be no surplus available for non-medicinal and non-scientific purposes.

Conferences of 1924 and 1925

But so drastic a policy was bound to encounter serious obstacles. The profitable cultivation of poppy and coca leaves in a number of countries would be seriously affected by so radical a limitation of production. Again, the difficult problem must be solved of determining the amount of opium products necessary to meet the legitimate medical and scientific requirements of the world, as a basis for fixing the permissible production of the raw materials. Then, too, the Committee was confronted with another acute problem — that of the continuance of opium smoking in some of the Far Eastern countries. The Committee finally recommended the holding of two conferences, which met at the end of 1924 and continued into 1925: One a special conference on the gradual suppression of the use of prepared opium, the other a more general conference to deal with the limitation of the export production of raw opium and coca leaves, and of the manufacture of morphine, heroin, and cocaine to the quantities required for medical and scientific purposes.

The first conference, attended by eight states, reached an agreement to suppress entirely within a period of fifteen years the consumption of prepared opium in the territories under their authority, this period to begin when the poppy-growing countries have taken the necessary measures to prevent the clandestine exportation of raw opium from their territories from constituting a serious obstacle to the reduction of consumption in the countries where the use of prepared opium is temporarily authorized.

The second conference, attended by the representatives of forty-one states, drafted a convention providing for the more effective restriction of the production or manufacture of narcotics, and establishing closer control and supervision of the international trade. Each signatory undertakes to state in advance its annual needs for medicinal, scientific, or other purposes, and the international trade is to be controlled by a system of export authorizations and import certificates. An important provision of the Convention was for the appointment of a permanent Central Board to which the parties are required to transmit periodically the estimates of the quantities of narcotics they need, with the right to inquire into what it deems to be the accumulation of excessive quantities in any country. Annexed to the convention was a protocol by which the signatory states agreed to take, within five years, measures necessary to prevent the smuggling of opium from constituting a serious obstacle to the effective suppression of the use of prepared opium in countries where such use is temporarily authorized.[6]

The Opium convention of 1925 has been ratified or acceded to by more than twenty states. It is held to be one of the important pieces of international legislation carried through under the auspices of the League of Nations.[7] Incidentally it is an excellent illustration of the League method of dealing with problems requiring international regulation: First, thorough preparation by the accumulation of all available data bearing on the subject, and the preliminary exchange of views, and then the conference, able to act intelligently because thoroughly informed.

II. Traffic in Women and Children

Under paragraph (c) of Article XXIII of the Covenant the members of the League pledge themselves to entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children. The history of the attempts to deal with this nefarious traffic is similar to that of the campaign against the drug traffic outlined above.[8] The problems involved are similar, in that both are at the same time national and international — international because no one state can effectively control operations which commonly cross state boundaries; and national because the traffic can be suppressed only when made punishable under the laws of the several states concerned.[9]

Before the governments interested themselves in the problem, it had been dealt with for some years by voluntary organizations formed in various countries to study and combat the traffic. These organizations united in an International Congress, held in 1899, which set up a coördinating body called the International Bureau for the Suppression of the Traffic in Women and Children. On the initiation of this Bureau two diplomatic conferences were held, in 1904 and 1910. The first conference resulted in an agreement whereby the parties to it undertook to establish a central authority to collect information concerning the traffic, to watch ports where it might be carried on, and to assist its victims. By the convention of 1910 the states undertook to punish those guilty of the traffic, as defined in the convention, even though the offense had been committed in another country. Up to the organization of the League sixteen states had become parties to the agreement, and nine to the convention.

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[6] This convention came into force on Sept. 25, 1928. For text of the convention and protocol, see Appendix XIV to article by R. L. Buell, *W. P. F. P.*, Vol. VIII, p. 39.

[7] The United States and China took the rather unusual step of withdrawing from this conference. The action of the United States has been vigorously criticized and as stoutly defended. For the government's view of the matter see Buell, *op. cit.*, 111 and 166. See also R. L. Buell, "The Opium Conferences," 3 *Foreign Affairs* (1925), 567.

[8] The following brief sketch is based on data found mostly in the *League Information Handbook on Social and Humanitarian Work,* and the *Monthly Summary of the League of Nations.*

[9] R. L. Buell, *International Relations* (Rev. Ed., 1929), 283–284.

The League Convention of 1921

The first step taken by the League under Article XXIII was the appointment of an official in the Secretariat "to keep in touch with all matters relative to the white slave traffic." The First Assembly of the League authorized a questionnaire directed to all governments, to ascertain the measures taken or proposed in the various countries to deal with the traffic, and invited the Council to call an international conference to consider the data elicited by the questionnaire, and to endeavor to secure coöperative action by the several governments. This conference was held in 1921, thirty-four states being represented. It resulted in the adoption of a Final Act containing a number of recommendations for action by the governments concerned. This Act was approved by the Council, and the Second League Assembly, in 1921, invited governments to sign a convention embodying many provisions of the Final Act, known as "The International Convention for the Suppression of the Traffic in Women and Children." It has been ratified or adhered to by more than thirty states.

This convention was intended to supplement rather than to supersede the earlier acts relating to the traffic. It strengthens them in several important respects: By making their punitive provisions more drastic, and the provisions for the extradition of offenders more effective; by prescribing that the contracting parties shall adopt such regulations as may be required for the protection of women and children seeking employment in another country; and by embodying provisions for the protection of immigrants. The conference also resulted in the creation by the League Council of an Advisory Committee on the Traffic in Women and Children, reorganized in 1925 under the name of "Advisory Commission for the Protection and Welfare of Children and Young People." This Commission is divided into two committees, one for questions concerning the traffic in women and children, the other, the Child Welfare Committee, to deal with matters relating to the protection of children.

The Advisory Commission, as its name implies, exercises primarily the function of advising the Council on all matters within its special field. In fact, because of its expert knowledge of the problems involved, and through its close association with the voluntary organizations working along the same lines, it virtually determines the policy of the League in this field of activity. Besides urging the ratification, by states not having done so, of the Agreement of 1904 and the conventions of 1910 and 1921, the League furthers the campaign against the traffic by keeping in constant touch with the latest developments concerning it. Annual reports on the traffic are received, not only from members of the League, but from non-member states which are parties to any of the International agreements on the subject. Acting on the initiative of the Advisory Committee, the League Council organized a group of experts to make special, first-hand investigations as to the extent of the traffic in certain selected countries, and the effectiveness of the measures hitherto taken to suppress it.

III. Traffic in Obscene Publications

This problem has been dealt with by the League along lines similar to those followed in connection with the traffic in women and children. Like the latter, it was first combatted by voluntary organizations in various countries. In 1908 a congress of these organizations recommended that governments should make the suppression of the traffic the aim of a common policy; and in 1910 a conference to that end was held in Paris. This conference drafted two acts: First, an International Administrative Agreement whereby the contracting parties undertook each to appoint a central authority to supervise the suppression of the traffic therein, and to communicate information to the corresponding authorities of other countries; and second, a draft convention. The agreement was ratified or adhered to by seventeen states, but the convention failed of ratification by any. In 1922 the situation was brought to the attention of the League of Nations, and on the initiative of the Third Assembly of that year, an International Conference for the Suppression of the Circulation of and Traffic in Obscene Publications, was held at Geneva, in 1923.

This conference had the benefit of replies from thirty-one governments to a questionnaire sent out by the Secretariat of the League, embodying full information on the attitude of the governments on various important questions likely to come before it. The result of the conference was an International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, and a Final Act. This convention has been ratified or acceded to by more than twenty states. It greatly strengthened the convention of 1910 by defining more broadly and explicitly offenses punishable by the governments as violations of its provisions; also by providing for the right of search, for further conferences to revise the convention if it should become necessary, and for the submission to the Permanent Court of International Justice of disputes arising out of the interpretation of the convention.

IV. Slavery and the Slave Trade

At first blush it may seem surprising that slavery and the slave trade constitute international problems at this late day; but if so, it should be borne in mind that even so enlightened a nation as the United States abolished human slavery only two generations ago. Slavery as a domestic institution is not primarily a matter of international concern; the slave trade, on the other hand, is international for reasons analogous to those dictating international control over the traffic in women and children and obscene publications. But even as a domestic status slavery has increasingly appealed to the moral sense of mankind, prompting efforts at suppression in the backward regions of the world.

For more than a century the slave trade has been a concern of European diplomacy, the earlier treaties dealing mainly with the right to search vessels suspected of being engaged in the slave traffic — a right which came to be generally conceded.[10] At the Berlin Conference of 1885 the powers pledged their endeavor " to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea," and particularly to suppress the trade by land and slavery itself within their territories in the Congo Basin. The Brussels antislavery conference of 1890 dealt with the problem more definitely, particularly as regards the slave traffic between the East coast of Africa and the regions bordering the Persian Gulf and the Red Sea.[11] Finally, in 1919, the Treaty of St. Germain went the length of condemning slavery and the slave trade in general terms, each power to endeavor " to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea." This treaty has been ratified by comparatively few states, and therefore has not constituted a solution of the slavery problem; for while serfdom in its grosser forms is rarely found, restrictions upon personal liberty almost equivalent to slavery and obnoxious to modern civilization are still found in many parts of the world.

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[10] Buell, *op. cit.*, 275 ff.; *Int. Con.*, No. 236, pp. 7 ff. (1928).

The Slavery Convention of Geneva

By Article XXIII of the Covenant of the League of Nations the members of the League agreed to " undertake to secure just treatment of the native inhabitants of territories under their control " — a pledge which brought the slavery question, in certain of its aspects at any rate, squarely within the competence of the League. As the immediate result of a report on slavery presented to the Fourth Assembly, the League, in 1924, set up what is known as the Temporary Slavery Commission. This Commission undertook a thorough investigation of the whole subject of slavery, and of conditions akin to slavery, its labors resulting in the drafting of a comprehensive convention known as the Slavery Convention of Geneva,[12] which has been ratified or acceded to by more than twenty states and signed by nearly as many more.

By this convention slavery and the slave trade are defined; and the parties each in respect to the territories under its " sovereignty, jurisdiction, protection, suzerainty, or tutelage," undertake to prevent and suppress the slave trade, and to bring about, " progressively and as soon as possible," the complete abolition of slavery in all its forms. Disputes relating to the interpretation or application of the convention are to be referred to the Permanent Court of International Justice if not settled by direct negotiation.

It should be noted that a substantial blow was struck at slavery under the mandatory system set up in the Covenant of the League of Nations, by the provision prohibiting the slave trade in the class B and C mandates, and by further provisions in several of the mandates obliging the mandatory gradually to emancipate all slaves, and to eliminate domestic and other slavery as speedily as social conditions will allow.[13]

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[11] For the text of the General Act of this conference see *Int. Con.,* No. 236, pp. 38 ff. (1928).

[12] For the text of this Convention, with critical comment, see *ibid.,* 12 ff.; also *Official Documents,* 21 *A. J.,* 171 (1927).

V. INTERNATIONAL UNION FOR THE RELIEF OF PEOPLE OVERTAKEN BY DISASTER

Senator Ciraolo, President of the Italian Red Cross, brought before the League a scheme embodying a union of the members of the League for the purpose of aiding countries visited by great catastrophes. The purpose of the proposed organization was not to supplant the Red Cross, but rather, acting in conjunction with it, to render relief in great emergencies more speedy and certain. On being submitted to the governments the scheme was quite generally approved in principle, and thereupon a committee was formed to consider the exact sphere of action of the proposed Union and the financial problems involved. This committee drafted a statute for the Union, which was submitted to the Council and the Sixth Assembly, and to all governments for their further consideration. A majority of them having expressed approval, the Council called a conference, in July, 1927, to draft a convention for an International Relief Union, which is now before the several governments for ratification.

In brief, the Union is one of states. It is to be financed by an initial fund, to which each member state contributes a stipulated amount for each unit in its quota of the League budget,[14] and by voluntary contributions. Thus having funds ready at hand, it will be able to render first aid immediately, without waiting for public appeals for funds. Beyond this, the object of the Union is to coördinate the efforts of relief organizations in the event of disaster, to encourage the study of preventive measures against disasters, and to induce peoples to render mutual international assistance.

The Union will function for the benefit of all stricken peoples within the territories of its members, regardless of race, nationality, or political or religious considerations. The scheme has the approval and assured coöperation of the Red Cross. It will be governed by a General Council, acting as a deliberative and constituent body and meeting every two years; and by an Executive Committee appointed by the General Council and assisted by experts who, in the event of disasters, automatically become the official advisers of the Committee for the organization of relief.[15]

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[13] See Ch. XXIII on Mandates.

[14] See Ch. XXI, Sub. VIII.

VI. Post-War Problems

The important work done by the League in dealing with certain conditions following the Great War is in point in this connection because it illustrates the methods and value of modern international organization. It need not be discussed at length because it was merely a temporary phase of the League's activities.

One problem immediately growing out of the war was the repatriation of war prisoners. In the Spring of 1920 nearly half a million war prisoners or interned soldiers were waiting for means to be sent home, sometimes under conditions of abject misery. A number of charitable organizations had undertaken to deal with the situation, but their efforts were hampered by insufficient means and lack of coördination. In April of that year the Council of the League appointed Dr. Fridtjof Nansen as High Commissioner to take charge of the work of repatriation. Assisted by the International Red Cross and other charitable organizations he completed the task by July 1, 1922, repatriating more than 400,000 prisoners belonging to twenty-six different nationalities, at a cost not exceeding two million dollars.

The problem of war refugees was even more difficult. In 1920 there were more than a million and a half refugees scattered all over Europe, young and old, men, women, and children, not only homeless but most of them penniless and unable to earn a living. Appealed to by the charitable organizations, the League Council entrusted Dr. Nansen, as High Commissioner, with the task of dealing with the question of refugees, the emergency demanding immediate provision for food, lodging, and employment.

To this end, with the help of the International Labor Office, a census of the refugees was taken according to their professions, and inquiries made to ascertain what countries would be willing to receive them and give them work. Offices were set up by the High Commissioner in most of the capitals of Central and Eastern Europe, and employment agencies established in some of them.

A particularly difficult situation arose in Constantinople, where 25,000 refugees were threatened with starvation. Through the efforts of the High Commissioner, aided financially by members of the League, the American Relief Organization, and the American Red

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[15] On the International Relief Union generally see *Monthly Summary* for August, 1927, 229 ff.

Cross, food was supplied and means provided to evacuate them to countries where they could find work.

In 1922 the League was confronted with a sudden emergency, occasioned by the defeat of the Greek armies by the Turks in Asia Minor. No less than 750,000 refugees, mostly women and children, crossed over into Greece, most of them without sufficient clothes, food, or lodging. The League authorized Dr. Nansen to utilize his Russian refugee organization in dealing with the new situation, and appropriated money to meet immediate administrative expenses. The Epidemic Commission of the League aided in securing sanitary conditions in the refugee camps, and governments and charitable organizations contributed vast quantities of clothes, medical stores, and the like. Immediate relief being assured, the need of a permanent solution of the problem presented itself; the Greek government, unaided, was unequal to the task. To meet the situation the League devised a scheme for the establishment of refugee settlements in Greece, and drew up a detailed plan under which a Refugee Settlement Commission was appointed, to which the Greek government undertook to transfer full rights over a large extent of territory. The scheme was financed by a loan of ten million pounds raised under arrangements formulated by the financial committee of the League; it has produced excellent results.

VII. League Method of Handling Social and Humanitarian Problems

In its social and humanitarian work the League has achieved substantial results. As regards the problems antedating its organization, such as the traffic in dangerous drugs and in women and children, it has materially strengthened the measures of control devised before its advent by voluntary organizations and governmental action; while it has been conspicuously successful in handling the difficult refugee problems following the war.

The League method of dealing with such problems is deserving of brief comment for two reasons: First, because, generally speaking, it is the characteristic way in which the League functions in other fields; and second, because it illustrates the very great value in international government of a permanent agency like the League, charged with the duty not only of securing agreement upon necessary measures of international regulation, but of making them more and more adequate in form and better observed in practice, by constant study and supervision. The traditional mode of international action was through a conference called by some interested government to formulate an agreement or convention dealing with the subject in hand. The conference often met without adequate preparation for its work, with little or no systematic preliminary exchange of views between governments, and with insufficient data on which to reach sound conclusions.

Conferences held under the auspices of the League are not called until thorough preliminary preparation has been made. This is in charge of an advisory committee of experts, aided in the execution of their plans by the permanent machinery of the Secretariat. By means of a questionnaire, or in some other appropriate way, all available data on the question to be dealt with are gathered and put in shape for intelligent use by the conference, thus affording a solid basis of fact on which to proceed. It may happen that in submitting this data, or by special request of the League, governments express their views on points likely to arise in the deliberations of the conference, thus serving warning that certain issues are contentious, and thereby promoting agreement on less contentious matters.

The League Conference Method

But the weakness of the earlier conference method was not alone in its lack of adequate preparation, or its methods of procedure. Adjournment ended the life of the conference; thereafter the ratification and enforcement of the measures it adopted were left for the most part to the initiative of the states concerned, some of them more or less indifferent, and all hampered by the red tape and dilatoriness characteristic of governments. No common agency existed to promote adhesion to the convention by states not parties to it, or to investigate and report upon the measures taken by the governments to enforce it, or to study its workings with a view to proposing remedies for defects disclosed in practice. The League is equipped to do all these things. Through the Secretariat, and its advisory committees, it may keep in constant touch with every aspect of the problems with which it is dealing; may quicken the diligence of states in adopting conventions by urging upon them the necessity of so doing if satisfactory results are to be attained; and may take the initiative in calling further conferences if deemed necessary to make existing regulations more effective.

It is obvious that in this process of international legislation, the advisory Committee, aided by the Secretariat, holds the central position. It is thoroughly international; it has at its disposal all the resources of the Secretariat, and may avail itself of the services of the International Labor Office, if need be. While in theory its functions are advisory, in practice, and almost of necessity, it is virtually in charge of whatever treaty-making the League undertakes in its special field. To this work it brings the best expert knowledge, and an unbiased judgment. The experience of the League in making up its advisory committees appears to be that the foremost experts in the world willingly accept this service, deeming it a mark of distinction and a privilege to be called upon to act in this advisory capacity. Experts are drawn from non-member as well as member states.[16]

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[16] The distinctive functions and value of these advisory committees appear in connection with other activities of the League in which they have been utilized.

CHAPTER XXVIII

INTELLECTUAL COÖPERATION UNDER THE LEAGUE

I. International Committee on Intellectual Coöperation

The varied activities of the League include those of a distinctively scientific and educational character. Within the latter category falls the promotion of intellectual coöperation — less spectacular, indeed, than many of the League's activities, but significant enough to merit more than passing mention. To the men who laid down the general lines of its policies it appeared that the League could make no more valuable contribution to the cause of world peace than the international organization of the world's intellectual activities and resources. Accordingly the First Assembly of 1920 recommended that the Council should associate itself as closely as possible with all steps to this end. Acting upon this recommendation, the Council investigated the means whereby it could be carried into practical effect. The matter was further considered by the Second Assembly, and its conclusions summed up by the committee to which it was referred, as follows:

> The Committee realizes the great importance of the organization of intellectual work; it knows that the future of the League of Nations depends upon the formation of a universal conscience. This can only be created and developed if the scholars, the thinkers and the writers in all countries maintain close mutual contact and spread from one country to another the ideas which can ensure peace among the peoples, and if the efforts already made in this direction receive encouragement.[1]

On the basis of this report the Council appointed twelve authorities on intellectual matters to serve as a Committee on Intellectual Coöperation. This committee, later increased to fifteen members, organized and began its work in 1922. The purpose of the movement was not to displace other existing agencies for intellectual coöperation — such, for example, as the International Research Council, the International Academic Union, the International Literary and Artistic Association, the Institute of International Law, the Academy of International Law at the Hague, the International Bibliographical Institute at Brussels, and many other international institutes, bureaus, federations, and associations, " each endeavoring within its special field to promote mutual understanding among intellectual workers in all countries, and to induce them to coöperate." The attempt was to be made, rather, to coördinate the work of these bodies, and thereby to promote the general intellectual interests of mankind; this end has been steadfastly pursued. The League organization is in no sense propagandist; it is not concerned with the dissemination of particular ideas, scientific dogmas, or trends of thought. It deals with problems of organization alone, undertaking by means of coördination and suggestion to improve the conditions of intellectual labor.[2]

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[1] Quoted in League Handbook, *The League of Nations and Intellectual Coöperation* (Rev. Ed., 1927), 7.

Program of the Committee

The Committee on Intellectual Coöperation prepared a program of work which was submitted to and accepted by the Third Assembly. It included:

1. A general inquiry into the conditions of intellectual life, which was conducted on the basis of a questionnaire sent out to the governments, embracing data on a variety of matters relating to the organization of their intellectual work, and of similar questionnaires sent out to academies, universities, learned societies, and the like.

2. An examination of the problem of assistance to nations whose intellectual life was especially endangered, referring particularly to the unfavorable conditions following the war in Austria, Hungary, and nearly all the nations of Eastern Europe, in fact. The result of this inquiry was the exchange of books and other necessary material for the benefit of scholars and scientific institutions in the needy countries. On the occasion of the earthquake which destroyed Tokio in 1923, the committee issued an appeal for the reconstitution of the foreign collections in the library of the Imperial University of Tokio, with gratifying results.

3. A study of questions of scientific property and of other questions of intellectual property. Under this head fell matters like the international regulation of copyright, the protection of university degrees and professional diplomas, and the rights of artists in their works.

4. The study of university coöperation, for the promotion of which

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[2] Handbook published by the International Institute of Intellectual Cooperation (1927), 10.

an International Information Office was set up. This office publishes a bulletin from time to time embracing a wide variety of information relating to the curricula of the different universities — especially their international vacation courses, the teaching of modern languages, etc. It coöperates with the International Students' Associations regarding the interchange of students, and deals with the extension of the exchange of professors. In 1926 it organized a conference of existing international students' associations at Geneva. At this meeting a committee was set up which will meet regularly in the future, and will endeavor to facilitate the coördination of the associations it represents.

5. A study of the coördination of bibliographical research. Here the purpose was to establish relations between scientists of various countries and to facilitate their researches. One proposal to this end was the organization of coöperation between librarians or groups of librarians in the different countries, with a view to the systematic classification of the contents of their libraries, making them more easily accessible, and completing the foreign sections by means of exchanges. One result of this proposal has been the foundation of an international coördination service in connection with the Institute of International Coöperation.

In 1925 the Committee on Intellectual Coöperation created a new sub-committee on arts and letters whose task is to encourage literary and artistic relations, and improve the dissemination of the fruits of literary and artistic endeavor from country to country. Among the activities undertaken by the sub-committee are the preparation of a draft model of copyright and an international convention based on the laws at present in force; the founding of an international museums office whose function it would be to strengthen and improve relations between museums, and facilitate exchanges and exhibitions; and the organization of an International Congress of Popular Arts, held for the first time at Prague, in 1928.

The Committee has immediate connection with the League Secretariat through a Section for Intellectual Coöperation; and to enable it to keep in touch with local conditions in the various countries, and to facilitate coördination between national institutions and movements, it set up a network of national committees, more than thirty of which have been organized, including one for the United States representing the main currents of intellectual life in each country, and assuring the League organizations the coöperation of the various interests they represent.

II. INSTITUTE OF INTELLECTUAL COÖPERATION

As the work of the League Committee progressed it became apparent that a larger and better endowed organization, patterned after the Secretariat of the League, was necessary to enable it to deal adequately with the broad field of intellectual coöperation. In July, 1924, the French government, to meet this situation, offered to set up in Paris an International Institute of Intellectual Coöperation, provide offices for it, and endow it with the funds requisite for its work of study and organization. The League Council promptly accepted the offer, in principle, and steps were taken to work out a constitution for the Institute. This was finally accomplished, and in January, 1926, the Institute was formally inaugurated.

In brief it is constituted as follows: Its affairs are administered by the Committee of Intellectual Coöperation of the League, which in turn appoints a Committee of Directors consisting of five persons of different nationalities. The French government provides quarters for the Institute and grants an annual subsidy for its support. It is permitted to receive donations, legacies, and other subsidies, and several governments have granted it financial aid; it receives no funds from the League of Nations. Its activities are free from direction or control on the part of the French government.

The League Organization for Intellectual Coöperation, then, is as follows: (1) A national committee in each country; (2) the International Committee on Intellectual Coöperation of the League, divided into a number of specialized sub-committees,[3] as the Governing Body of the Institute; (3) the Institute, serving as the executive organ of the International Committee and divided into sections corresponding to the organization of the Committee; (4) a group of official delegates to the Institute, representing some thirty-five governments, mostly diplomats, serving as links between the Institute and their several home governmental agencies.

Activities of the Institute

The Institute, under the direction of the International Committee, has carried along and amplified the work initiated by that body. Among its special activities the following may be noted. Its publications include a series of quarterly international bulletins — on University Relations, on Scientific Relations, of the International Museums Office, and of the Information and Reference Section. Among its special publications are an international handbook of museums and an annual list of notable books published in different countries. In 1928 it published a comprehensive list of the holiday courses offered by the leading universities in Europe.

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[3] These sub-committees are as follows: For University Relations, for Science and Bibliography, for Arts and Letters, and on Intellectual Rights. For a view of League work in this field see summary of reports of these sub-committees at the 10th session of the International Committee on Intellectual Coöperation, July, 1928, in *Monthly Summary* for September, 1928, 229 ff.

It is conducting a study of the systems of depositing publications as required by law in different countries, and of the laws and regulations dealing with exchanges of teaching staff, exchanges of students, and equivalent recognition of studies and degrees; also a statistical investigation of the important subject of translation. It has given support and encouragement to a number of important international institutions and associations, furnishing them quarters in its offices, and aiding them in organizing their congresses, to many of which the Institute sends representatives. Its work of coördination includes close contact with the national committees, which it aids in various ways. In 1926 it organized a meeting at Warsaw of the representatives of the national committees in Central and Eastern Europe, one result of which was the establishment of coöperation between the representatives of countries that were opposing combatants in the World War.

It has brought about the establishment of a liaison committee of the major international associations,[4] which meets periodically at the Institute and discusses the problems of the intellectual preparation of peace. Its conclusions are then considered by a sub-committee of experts appointed by the League of Nations. The Institute is working for the coördination of national centers of advanced international studies, the idea being to induce the institutes and schools in each country engaged in training future agents of international relations, to establish regular contact among themselves, and to exchange teachers and students. It is in regular communication with the international students' associations, and the Institute is headquarters for the Interfederal Committee of International Students' Associations, lately founded. Thus coördination has been secured

[4] Among these associations are the World Alliance of Young Men's Christian Associations; the World Alliance of Young Women's Christian Associations; the International Confederation of Students; the World Federation of Student Christian Societies; the International Council of Women; the Junior Red Cross; the Carnegie Foundation for International Peace; and the International Federation of University Women.

between the principal societies representing the student bodies in the various countries.

It is now engaged in the work of improving scientific bibliography in the physical, social, and biological sciences, and in those concerned with Greek and Roman antiquities; also in working out a scheme for an international library organization. This would include the maintenance, at the Institute, of a special service responsible for keeping up to date a handbook of the world's libraries, directing research workers to the libraries best able to meet their needs, promoting coöperation among libraries and the establishment of public information services in every country.

The foregoing activities of the League in the field of Intellectual Coöperation, which have been described in some detail, are but a few of the many lines of work to which its attention has already been directed. In limiting itself to the most practical and obviously useful enterprises, it has made a virtue of necessity; its funds and organization have been inadequate for a more ambitious program, and at the same time it has deemed it best to avoid criticism, and perhaps jealousy, on the part of the many organizations working in special fields but along similar lines, by keeping strictly to the task of advice and coördination.

Not only is its work of substantial value in that it renders more effective a wide range of specialized activities in the intellectual field; it also illustrates one of the most potent and necessary forces in the development of international government — the spirit and habit of international coöperation in promoting the common interests of mankind. Indeed, this is the justification of the League organization; it rests upon no special mandate in the Covenant. The point was summed up by M. Léon Bourgeois, who reported to the Council the Assembly's recommendation that the Council should interest itself in the work of intellectual coöperation: " If the League of Nations concerns itself with improving the exchange of material products it should surely also study the methods of accelerating the exchange of ideas between nations. Without a spirit of mutual understanding between nations the League cannot live." [5]

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[5] See Alfred Zimmern, " The League and Intellectual Coöperation." Ch. VII of *The Problems of Peace* (Geneva Institute Lectures, 1926). At its 12th session, in July, 1930, the Committee on Intellectual Coöperation considered at length and adopted the report of a committee appointed to study the program and organization of intellectual coöperation. For summary of its discussions, which throw interesting light upon the League's activities in this field, see *Monthly Summary* for July, 1930, pp. 130 ff.

CHAPTER XXIX

LEAGUE ACTIVITIES IN THE FIELD OF ECONOMICS, FINANCE, AND INTERNATIONAL COMMUNICATIONS

This chapter in the story of the League of Nations must be treated with a brevity out of all proportion to its intrinsic importance. And first, as to the reasons why an international organization essentially political should address itself to problems primarily economic.

Economic Basis of International Politics

These reasons are not far to seek. Internationalism is economic as well as political; indeed, some of its outstanding objectives have been definitely economic. It is difficult to disentangle the threads of political and economic policy which form the web of modern international relations. Imperialism has sought economic ends by political means, in the materially rich but politically undeveloped regions of the world; and even when political motives are disclaimed, economic control is hardly less potent than domination avowedly political — indeed, it may become political as a matter of self-protection.

Primarily political interests are hardly less economic. War is a political phenomenon, as are the agencies set up to provide substitutes for war; nevertheless, the clash of economic interests is the tap-root of modern war. Nations seek their place in the sun — a political aspiration; but the place in the sun means economic supremacy rather than political domination in modern world politics. The sense of economic dependence has made the nations acutely conscious of the perils of defenselessness, and motived much of the diplomatic intrigue which culminated in the World War.

Commerce and economics are thoroughly international; the economic basis of international politics is no less apparent than that of national politics.[1] Certain essential privileges and opportunities nations will fight for, if they are not otherwise attainable; and it is the business of international government to see to it, so far as possible, that they are otherwise attainable.

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[1] See Charles A. Beard, *The Economic Basis of Politics* (1922).

There are four basic economic rights that every virile industrial nation must enjoy, if it is to be a creative and contented factor in international relations: The right of *transit,* the right of *trade,* the right of *investment,* and the right of *migration.*[2]

The right of transit means freedom of navigation on the seas and international rivers, the use of international railways and canals, and entry into the seaports of the world. The right of trade implies, not the abolition of tariffs but the absence of unjust and burdensome discriminations, and in the case of colonial trade, of undue restrictions upon commerce with the colonial possessions of the dominant powers. The right of investment means, in general, the open door for capital in the undeveloped regions of the world. To strengthen the assurance of these necessary elements of national welfare is obviously a legitimate international objective.

Equitable Treatment of International Commerce

International government has developed very largely under the pressure of economic interests; and that pressure becomes not less but more severe under the competitive conditions of modern international life. President Wilson, among other statesmen of the war period, sensed the basic importance of the economic factor in international relations; indeed, so vital did he consider it that he incorporated it into his peace program, the celebrated Fourteen Points. The third of these Points declared for the "removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance." And the substance of this Point was incorporated into the Covenant of the League of Nations, in Article XXIII, paragraph (e), under which it is provided that the members of the League (subject to the provisions of international conventions existing or hereafter to be agreed upon)

> will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all members of the League.

This provision is the constitutional basis of such economic work as the League has prosecuted; but as in other connections, it has broadened its interests far beyond the letter of the Covenant. As an agency to cultivate friendly relations between nations, it has considered as legitimately within its province the amelioration of economic conditions tending towards war; and this, in turn, necessitated an inquiry into the factors entering into those conditions, for thus only could it act advisedly in removing the causes of international disputes. So also, apart from its rôle as peace-preserver, it has undertaken to better conditions working economic injustice to individuals and governments.

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[2] Glenn Frank in Duggan, *League of Nations* (1919), 186. See also Sir James A. Salter, *The Reawakening of the Orient,* 143 ff., on "Economic Conflicts as the Causes of War" (1925).

Before proceeding to a discussion of the work of the League in this field it is to be observed that President Wilson's Third Point, and the provision of the Covenant above quoted, are not inconsistent with restrictions or conditions which states may place upon their commerce with foreign nations. A state may levy import duties upon foreign merchandise, not only to raise revenue, but also to restrict or even virtually to prohibit importations. So also it may directly prohibit trade in certain articles with foreign countries; or levy duties upon exports to foreign countries; or exclude foreign vessels from participation in its coasting trade. Restrictions upon the immigration of aliens are common, and aliens once admitted may be denied property rights enjoyed by citizens. Commercial treaties which favor certain foreign states and discriminate against others are legally permissible.

The aim of the present movement for greater commercial freedom is not to bring national tariff systems under international control, or to cast national legislation regulating foreign commerce in a uniform mould, but to remove, so far as possible, vexatious restrictions upon international commerce, and particularly to make such restrictions as may be continued non-discriminatory in their application to the commerce of the various nations. A high tariff universally applied is less provocative than a discriminatory tariff.

I. Economic and Financial Organization

The League Economic and Financial Organization is made up of two committees, the Financial Committee and the Economic Committee, together with a Consultative Committee — a body of experts in industry, commerce, finance, agriculture, labor, and questions affecting consumers, which was set up in connection with the work of the International Economic Conference later referred to. The Economic and Financial Committees, each consisting of twelve to fifteen members, are selected, not as representatives of their governments, but for their preëminent capacity to deal with the various aspects of economics and finance. They function as disinterested experts, and their conclusions and recommendations, untainted by partisan bias, carry great weight. Subject to the direction of the Council as to general lines of policy, they are given a free hand in the prosecution of their work. The economic and financial sections of the League Secretariat serve as a special secretariat for the organization.

Their method of procedure is characteristic of the League. First they decide, on thorough study, whether a suggested subject can be pursued with some prospect of substantial results. A subject passing this test is then submitted to committees of specialized experts, who give it minute examination. A program with reference to each particular subject is prepared, and recommendation made to the Council to summon a conference for the purpose of drafting a convention on the subject. This convention is then sent out to the governments interested for such action as they may see fit to take. This procedure deserves special notice because of its peculiar adaptability to economic and financial problems.

The barest summary of the financial and economic work of the League must suffice. Its first undertaking in the field of finance was an inquiry into the financial problems created by the war. To this end an International Financial Conference was held at Brussels, in 1920, attended by representatives, as technical experts but not as official spokesmen of their governments, from thirty-nine states. The report of this Conference, which was unanimously adopted, dealt exhaustively with almost every branch of public finance.[3]

Financial Reconstruction of Austria and Hungary

Two years later the League undertook one of its outstanding pieces of work — the financial reconstruction of Austria. Dramatic as is the story of this achievement, and typical as it is of the potentialities of collective international action, it must be told in a word. Austria was bankrupt, and threatened with financial ruin. Appeal was made to the League Council for aid in obtaining a loan, but the security was too precarious to tempt financiers. On final appeal to the League its Financial Committee drew up plans for financial and monetary reforms in Austria, on the strength of which loans were arranged, in part guaranteed by a number of governments, and placed under the administration of a Committee of Control acting for the guaranteeing governments. Budgetary and other administrative reforms proposed by the Committee were carried through under a Commissioner-General representing the League, and Austria at length became solvent again. The scheme of rehabilitation was completed in 1926, when Austria resumed a normal economic life.[4]

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[3] For text see Vol. III, No. 5, *League of Nations,* (*W. P. F. P.*) (1920).

In the following year, 1923, a similar plan of reconstruction was worked out for Hungary, on her appeal to the League for assistance. Her plight was less serious than that of Austria, but a depleted currency and a budget deficit created a situation with which she seemed unable to cope. Under League supervision Hungary mastered her financial difficulties.[5]

These achievements of the League in the financial rehabilitation of Austria and Hungary were at once economic and political. Not only did they avert the impending financial ruin of Austria, and help Hungary out of her serious financial difficulties, but they were a long step forward in the post-war reconstruction of Europe. While eliminating the grave dangers of social disorders, and even of revolution, in the two countries directly concerned, they appreciably bettered the political relations of all the countries of Central Europe. Moreover, the results attained are a striking commentary on the League method of dealing with delicate situations — the advantages of a broadly international agency over the interposition of a single state or a limited group of states, in such situations. League control disarmed all suspicion of selfish motives or sinister ambitions on the part of the states immediately interested: and further, the resources of the League ensured the most expert planning and supervision.

Refugee Work — Economic Conference of 1927

Other financial problems of importance and difficulty have been handled by the League. It engineered a series of loans in aid of the immense number of Greek refugees who poured into Greece, homeless and destitute, after the defeat of the Greek armies by the Turks in Asia Minor. In 1926 it performed a similar service in behalf of Bulgaria, for the refugees who had entered Bulgaria from neighboring countries during the troubled years from 1912 on. The Financial Committee has rendered other services, less striking but of substantial value, such as advising Estonia as to her financial policy, aiding in the fiscal administration of the Free City of Danzig, studying the questions of double taxation and tax evasion, and framing a convention to suppress counterfeiting.[6]

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[4] For summary of this scheme see R. L. Buell, *International Relations* (Rev. Ed., 1929), 426; also D. P. Myers, *Ninth Yearbook of the League of Nations*, 59 ff.

[5] The Commissioner-General of the League of Nations for Hungary was Mr. Jeremiah Smith, Jr., of Boston.

The most ambitious piece of work thus far undertaken by the Economic Committee was the organization of the great International Economic Conference of 1927. In this Conference sat 194 members, attended by 157 experts, from fifty countries, members and non-members of the League. Its work took the form of resolutions dealing with the general economic situation of the world, and with the special economic conditions affecting commerce, industry, and agriculture. One result of this Conference was the creation of a Consultative Economic Committee of fifty-two members, including representatives of the International Labor Office, the Economic and Financial Committees, the International Chamber of Commerce, and the International Institute of Agriculture.[7]

Convention on Customs Formalities

The Economic Committee has endeavored in various ways to promote equitable treatment of international commerce. It has studied such questions as unfair competition through fraudulent trade practices — the use of false trademarks and the like; unjust or oppressive treatment by any member state of foreign nationals admitted to do business in its territory; excessive, unnecessary, or unjust customs formalities, and unjust discriminations in the treatment of goods and vessels. In 1920 a Conference on Passports, Customs Formalities, and Through Tickets, held in Paris, proposed measures which greatly simplified travel among the many states accepting them. A second Passport Conference was held in Geneva in 1926, thirty-eight governments being represented. It resulted in a series of recommendations designed to improve international practice with respect to passports.[8]

Its study of customs formalities resulted in a conference at Geneva in 1923, attended by the representatives of thirty-five countries. This conference drafted a convention intended to promote greater publicity, simplicity, expedition, and equality in the matter of customs regulations and procedure. This convention has been adopted by nearly thirty states. The Committee has undertaken to further the important international movement for the arbitration of disputes arising out of the execution of commercial contracts between parties of different nationalities, its work, encouraged and aided by the World Economic Conference of 1927 and the Assembly of the League, ultimately taking the form of a convention on the subject, which has been adopted by some twenty states and signed by some thirteen others, and is now in force.

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[6] For the details of this financial work of the League see *Information Handbook on the League Economic and Financial Organization,* 13 ff. On the financial reconstruction of Austria and Hungary see IX *W. P. F. P.* (1926), 220 ff.

[7] On the International Economic Conference see *Eighth Yearbook of the League of Nations,* 36 ff.; *League Information Handbook* cited above, 54 ff.; Vol. X *W. P. F. P.* (1927), 375 ff., *Monthly Summary* for June, 1927, with Annex containing documents and other data.

[8] On the simplification of customs formalities see W. E. Rappard, *International Relations Viewed from Geneva* (1925), Ch. III.

Other Activities of the Committee

Numerous other matters have engaged the attention of the Committee, among them economic crises and unemployment, protection of the foreign buyer against goods worthless or of bad quality, and the unification of tariff nomenclature. It has lately formulated an International Convention on Economic Statistics, signed by many states but not yet in force.[9] The League has published much valuable material prepared by its Economic and Financial Organization.

This Organization has recently sponsored three interesting movements to improve international relations. One concerns the treatment of foreigners and foreign enterprises. A diplomatic conference, at which forty-two members of the League and four non-members were represented, was held in Paris in November–December, 1929, to undertake the conclusion of an international convention dealing with this important matter. The conference had before it a draft convention prepared by the Economic Committee, which embodied provisions designed to set up effective guarantees of fair treatment of foreigners doing business in the several countries, in accord with the principle of “ equitable treatment for the commerce of all members of the League ” set forth in Article XXIII of the Covenant.

The draft convention encountered objections on so many points that the conference decided to give the governments further time to study the subject with a view to agreement along more liberal lines than seemed possible at the moment. Accordingly the conference adopted a protocol under which the delegates undertook to submit to their several governments all the documents relating to the work of the conference, for their study and observations, in preparation for the conclusion of a convention at a later session of the conference.[10]

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[9] Some idea of the scope of its work may be gained from résumés of the topics considered at its regular sessions. See, for example, *Monthly Summary* for February and May, 1929, for reports on its 27th and 28th sessions.

The abolition of export and import prohibitions and restrictions has engaged the attention of the Economic and Financial Organization. Three international conferences have been held under its auspices, resulting in the conclusion of a convention dealing with this subject which has been ratified by a substantial number of states.

Conference on the Tariff Truce

A third activity of the League, prosecuted through its Economic Committee, has been the organization of a conference on Concerted Economic Action, more familiarly referred to as the Tariff Truce. This movement originated in a resolution of the Tenth Assembly which recognized the importance of taking all possible steps to carry into effect the recommendations of the World Economic Conference of 1927, and proposed that states prepared to join in concerted action "should agree not to increase their protective tariffs above the present level for a period of from two to three years, or to impose new protective tariffs or create new impediments to trade."

The Economic Committee formulated a draft convention, the essential point of which was that the contracting parties undertook to declare a "truce," with a view to putting an end to the raising of customs tariffs. This draft convention went before a conference in February, 1930, attended by some thirty states, mainly European, with several governments represented by observers. The conference adopted a commercial convention providing for some measure of tariff stability, and a Protocol on Future Negotiations by which the signatories recognized the need of concerted action with a view to closer economic coöperation, the improvement of production and trade, and the enlargement of markets. The Protocol recommends that the Economic Organization should undertake an objective investigation into means of establishing close coöperation between Europe and overseas countries and of improving trade relations between Europe and these countries to their mutual advantage. This convention has been signed by a considerable number of states.[11] Parties may give notice of withdrawal two months before April 1st, 1931; otherwise it remains in force six months longer.

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[10] On this undertaking see *Monthly Summary* for December, 1929, 338 ff., and for January, 1930 (Vol. IX, No. 12), 351 ff.

[11] On this movement see *Monthly Summary* for February, 1930, 35–36, and for March, 1930, 58 ff.

II. ORGANIZATION FOR COMMUNICATIONS AND TRANSIT

On the same provisions of the Covenant (Art. XXIII, Par. (e)) has been built up another organization of fundamental importance, known as the Organization for Communications and Transit. So vital is the matter of communications to a well-ordered international life that it could not be ignored by any institution, like the League of Nations, dedicated to the promotion of international coöperation. International transport touches nations at vital points. Their growing economic dependence, and their widening commercial interests, have brought into bold relief the necessity of liberalizing and coordinating the policies of nations in respect to transport — not alone in furtherance of national prosperity but to strengthen the assurance of international peace as well.

The story of how the battle for freedom of the seas in time of peace was substantially won, and of how, by international agreements beginning with the Congress of Vienna, in 1815,[12] the navigable rivers of the world have been thrown open to the free use of commerce, forms an interesting and even dramatic chapter in the history of international relations. The application of the principle of neutralization, or internationalization, to the great interoceanic canals, was another victory for commercial freedom. It was not a mere coincidence that the first of the international administrative bodies discussed in an earlier chapter dealt with matters relating to international communications — such as the Rhine River Commission of 1804, the Danube Commission of 1856, the Telegraphic Union of 1865, and the Universal Postal Union of 1875. Indeed, just as it is a primary function of modern national government to perfect the means of domestic intercommunication, so it is a major concern of international government to liberalize the use of channels of international communication, in the interest of peace and justice.

International Communications in the Peace Treaties

That the importance of international communications was keenly appreciated at the Peace Conference is evidenced, not alone by the Covenant of the League of Nations, but by other provisions in the Peace Treaties. All contain an extensive chapter or part entitled "Ports, Waterways, and Railways." Part XII of the treaty with

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[12] Which declared that "those states which are separated or traversed by the same navigable river engage to regulate by common consent all matters relating to the navigation of this river."

Germany, for example, contains not only elaborate provisions relating to freedom of transit through German territories and the free use of German ports and inland navigation routes, but general provisions concerning a number of rivers, including the Danube, which are declared to be international in that they provide more than one state with access to the sea. Still other provisions deal with the Rhine and the Kiel Canal, and international transport by rail. The treaty also placed the Elbe and Oder rivers under the administration of International Commissions. The Rhine and Danube have long been under such Commissions. So also, at least one post-war treaty deals specifically with the subject of communications — the so-called Straits Convention of 1924, which internationalized the Bosphorus and Dardanelles by binding Turkey to permit their free use at all times by neutral merchant ships, her guarantees being supervised by a Straits Commission, which makes an annual report to the League of Nations.[13]

The importance attached to this general subject is reflected in the Communications and Transit Organization of the League. Its make-up was dictated by the need of collaboration between technical experts from the different countries in dealing with problems primarily and often highly technical. It consists of two bodies: One, called the General Conference, which meets at infrequent intervals and is composed of technical representatives of all the states members of the League, and sometimes of non-member states; the other a smaller body known as the Advisory and Technical Committee on Communications and Transit, made up of experts from a few countries designated by the General Conference or permanently represented in the Council of the League.

General Conferences and Their Work

Three General Conferences have been held: At Barcelona in 1921, and at Geneva in 1923 and 1927, forty-odd states being represented at each. The Barcelona Conference adopted two conventions of great importance: The International Convention of Barcelona on Freedom of Transit, the purpose of which is to do away with unreasonable and unnecessary obstructions to transport across a state as to goods or passengers whose point of departure and destination are outside the state; [14] and the great Convention and Statute on the Régime of Navigable Waterways of International Concern — "waterways of international concern" being defined as commercially navigable waterways which provide more than one state with access to the sea.[15]

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[13] For text of this convention see *Official Documents,* 18 *A. J.* (1924), 53.

[14] For text see *Official Documents,* 18 *A. J.* (1924), 118. This convention has been adopted by some twenty-five states.

The second General Conference, of 1923, produced no less than four conventions of major importance: A General Convention on the International Régime of Railways, a General Convention on the International Régime of Maritime Ports, a Convention relating to the Transmission in Transit of Electric Power, and a Convention on the Development of Hydraulic Power affecting several states. The Third General Conference, of 1927, adopted no conventions but devoted itself to the consideration of the methods of international coordination utilized by the League in the matter of transport. It was attended, not only by the official representatives of forty-one countries, but by experts from a large number of International Commissions and other bodies concerned with problems of transport.[16]

The Advisory and Technical Organization on Communications and Transit was organized by the Barcelona Conference; it is a consultative and technical body to assist the Council and Assembly of the League. Dealing as it does with a highly technical field, it is divided into a number of sub-committees, and is aided by temporary committees and experts on special subjects. It meets more frequently than the Conference, ordinarily about twice a year. An important part of its work consists of measures taken to carry out the decisions of past Conferences, and preparation for future Conferences. Apart from these duties it deals with practical transport questions — problems of railroad, air, and water transport. It has undertaken to facilitate the settlement of international disputes in connection with communications; it has also dealt with the important matter of calendar reform.

III. THE BANK FOR INTERNATIONAL SETTLEMENTS

The recent establishment of the institution known as the Bank for International Settlements, while not the work of the League of Nations, is so closely related to the subject matter of this chapter as to come in for brief treatment in this connection. This institution, called into existence for a specific purpose which will in due time have been fully served, bids fair, nevertheless, because of its potential value as a factor in world finance, to constitute a milestone in the progress of economic internationalism. The story of its background, interesting as it is for the light it throws upon some of the international questions already discussed — among others the financial aspects of modern war — must be confined to the barest outline.

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[15] *Op. cit.*, 151. It has been adopted by some fifteen states.

[16] For résumé of its work see *Monthly Summary* for October, 1927, 286 ff.

The Bank for International Settlements is primarily an agency to facilitate the solution of the German reparations problem under the so-called Young Plan — itself a notable illustration of the new method of approach to international questions. This Plan, in turn, is the last of three successive attempts to deal with the enormously difficult matter of reparations. The Peace Conference struggled with it in vain, finally referring it to an Inter-Allied body known as the Reparations Commission. The problem as a whole involved two or three closely related questions — how much Germany should pay by way of war indemnity, her capacity to pay in the hard times that would inevitably follow the War, and the complicated matter of transferring to the Allies the huge sums she would be called upon to pay. It is the last aspect of the problem that gives special point to a discussion of the Bank for International Settlements.

Finally, in the Spring of 1921, the Reparations Commission fixed the total sum to be demanded of Germany, and provided that it should be covered by the issuance of three classes of German bonds, the retirement of which, with interest, called for heavy annual payments.[17] This first plan of reparations settlement, confessedly more political than economic in origin and spirit, soon demonstrated its futility; in her economic disorganization Germany could not meet the terms imposed upon her. The extent of her defaults in payments, and her good or bad faith in permitting them to accumulate, became matters of bitter controversy, resulting, on the part of France, in the occupation of the Ruhr as a means of coercion.

The Dawes Plan

At length even the creditor nations became convinced that the reparations question, thus far unsuccessfully handled by the statesmen, should be referred to a body of competent financial experts. Hence the Dawes Commission of 1924, and the so-called Dawes Plan of reparations settlement. The details of this scheme are not in point; in brief, it prescribed annual payments substantially under those fixed by the Reparations Commission, secured their payment by mortgages on the German railways and German industries, set up a system of allied control over German finance and industry, and placed the enforcement of the provisions of the Plan in general charge of an Agent-General for Reparations.[18] This official was one of a committee of six known as the Transfer Committee, a body of special interest in this connection. Its function was to supervise and control the transfer of reparations payments from Germany to the Allies — a delicate matter of international exchange; and thus it was the forerunner of the Bank for International Settlements.

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[17] This total was $31,000,000,000 with interest, with a fixed minimum annual payment of about $475,000,000.

This scheme of reparations settlement, while an improvement upon that of the Commission, in turn proved unsatisfactory both to the creditor nations and to Germany. The annuities could not be met by Germany without foreign loans in aid of her industries, the net result of which was to change the character of her indebtedness, not to liquidate it. Moreover, the Dawes Plan, apart from its financial demands upon Germany, had two elements of weakness: First, it did not undertake to fix definitely the total sum which Germany should pay, thus leaving a vitally important factor in uncertainty for both debtor and creditor nations; and second, it imposed upon Germany an irritating and humiliating system of foreign control over her internal financial and economic life.

The Young Plan

Thus a further attempt to solve this thorny problem became imperative — again undertaken by a committee of experts headed, like its predecessor, by an American.[19] Its members were drawn from Belgium, France, Germany, Great Britain, Italy, Japan, and the United States.[20] Its deliberations, which were held in Paris in February–April, 1929, resulted in the so-called Young Plan — so named after the American chairman of the committee. Its provisions need not be detailed; in brief it bettered the Dawes Plan by fixing definitely the number of annuities to be paid by Germany, extending them over a period of fifty-eight years and reducing them to an amount within the fairly estimated capacity of Germany. Again, it relieved Germany from the mortgages which encumbered her railways and industries, and restored her economic and financial independence by terminating the foreign controls set up under the Dawes Plan.

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[18] An American financier, Mr. S. Parker Gilbert, served as Agent-General for Reparations.

[19] The American experts, Messrs. Owen D. Young and J. P. Morgan, were named by joint action of the Reparations Commission and the German government.

[20] For official text of the Dawes Plan see *W. P. F. P.*, Vol. VI, No. 5; and on the operation of the Plan see *op. cit.*, Vol. VIII, Nos. 5 and 6; J. W. Angell, *The Recovery of Germany* (1929), Ch. III.

For the Allies it assured fixed annuities presumably within the ability of Germany to pay, and in particular, it enabled them to anticipate the payment of a part of the annuities by the sale of German reparations bonds in the financial markets of the world — a privilege commonly referred to as the commercialization of German annuities.

It was to aid in the execution of the Young Plan that the Bank for International Settlements was organized. Such an international institution had been discussed from time to time since the World War by economists and bankers interested in the international movement of credit and commerce, but it came into being as it did, not to meet a general international situation but in response to a specific demand, which confronted the Young Committee, for some agency to aid in the collection and distribution of reparations.

The report of this Committee [21] set out in some detail the leading features of the proposed organization; the Plan further provided for an Organization Committee, made up of members from the six countries represented on the Young Committee and unofficial delegates from the United States, to complete the organization of the bank. This Committee completed its labors at The Hague in January, 1930, and appropriate action by the governments concerned has put the Bank into operation.

Organization and Functions of the Bank

In brief, its organization and charter functions are as follows: It is located at Basle, Switzerland. Its stock, covering a capitalization of $100,000,000, has been underwritten by the central banks of issue [22] of Belgium, England, France, Germany, and Italy; by a consortium of banks in Japan, whose laws forbid the Bank of Japan to assume such an undertaking; and by a syndicate of banks representing the United States, whose government declined to permit the Federal Reserve Bank of New York, which was designated in the report of the Young Committee as the bank of issue of the United States, to participate in the underwriting.

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[21] For the text of this report see *A. J.* for April, 1930, *Supplement of Official Documents,* 81 ff.; also *Int. Con.,* No. 253 (Oct., 1929), 21 ff. The proposed bank is outlined in Annex I of this report. On the Young Plan generally see Angell, *op. cit.,* Ch. XI.

[22] Like the Bank of England, the *Banque de France,* the Reichsbank in Germany, etc.

Control of the new international bank is vested in a board of directors made up of the governors of the central banks of issue in each of the six countries other than the United States, and of one member nominated by each of these governors. In the case of the United States the scheme provides that the directors shall be persons selected by the group of underwriting banks without objection by the Federal Reserve Bank of New York. France and Germany are each entitled to an additional director during the period of reparations payments. This board of sixteen members is empowered to increase its number to twenty-five by the choice of nine additional members as soon as countries other than the original seven indicate their desire to participate in the bank by taking the allotment of capital stock set apart under the Plan for such countries. Thus will be brought together a group of financial and business men unsurpassed in ability and experience anywhere in the world.[23]

What are the functions of this international banking institution? Simply stated, its primary business is that of acting as agent and trustee for the creditor governments, under an agreement with them, in the collection and allocation of German indemnities. It also acts as agent for the creditor governments in connection with the issuance of the so-called reparations bonds — not, however, by assuming any financial responsibility with respect to such bonds, but only by way of advice and negotiation. Further, in the event that Germany should encounter serious and continued difficulty in meeting her obligations under the Young Plan, the bank is empowered to take the initiative in setting up a committee to study the situation and propose remedies.[24]

Prospective Development — General Significance

To what extent the bank will go beyond these specific activities into the general field of banking remains to be seen. Its charter powers are broad enough to enable it to take on certain ordinary banking functions. For example, it may loan to and borrow from the central banks; it may open accounts with these banks, which in turn may open accounts with the international bank; it may even administer gold settlement funds. But any extra-reparations functions it may assume must be in conformity with the policies of the central banks directly concerned, this safeguard being made effective by giving each bank the right to veto by its dissent any financial operation directly affecting it. Thus it cannot become a real competitor of the central banks — cannot develop into a "super-bank." That it might enter the wider banking field under the prescribed restrictions was anticipated by the experts, who closed their general discussion of it with the following remark:

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[23] Mr. Gates W. McGarrah, chairman of the Federal Reserve Bank of New York, was made President of the Bank for International Settlements.

[24] The Young Plan went into effect in May, 1930, and simultaneously the work of the Reparations Commission terminated, being taken over by the Bank for International Settlements, which was organized in April, 1930.

> In the natural course of development, it is to be expected that the bank will in time become an organization, not simply, or even predominantly, concerned with the handling of reparations, but also with furnishing the world of international commerce and finance important facilities hitherto lacking. Especially is it to be hoped that it will become an increasingly close and valuable link in the coöperation of central banking institutions generally — a coöperation essential to the continuing stability of the world's credit structure.

Such in brief is this new and novel international institution. Apart from the important rôle it is destined to play in the financial liquidation of the Great War, it has very great significance and abundant possibilities as an agency for the internationalization of finance. Speaking of the influence of its board of directors in world finance Mr. Thomas W. Lamont, one of the signers of the experts' report, says:

> That board will in time be the regular meeting place of the representatives of the twelve or fifteen leading central banks of the world. They will be able periodically to report to one another on economic and financial conditions in the regions from which they come and, by reason of being thoroughly posted in advance, to minimize or even prevent through coöperative methods the development of perilous economic or exchange conditions. With a common aim from the very start — namely, the maintenance of currency and credit stability throughout the world and, within the limits proper, the promotion of trade and prosperity — these men should come to know, appreciate and collaborate with one another in a manner and to a degree not heretofore considered possible.[25]

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CHAPTER XXX

THE INTERNATIONAL EXECUTIVE FUNCTION UNDER THE LEAGUE

In Chapter XII the problem of the executive function in international government was considered, especially in its historical aspects. The failure to develop international agencies of a distinctively executive character was pointed out, and various principles and institutions of international politics and public law — the Balance of Power, the Concert of Power, public opinion, and war — were evaluated as factors in maintaining the integrity of international law and the society of states. In the present chapter the efforts made since the World War to strengthen the sanctions of international government and the results thereof will be reviewed.

By a sanction, as has been pointed out, is meant a means of enforcement — what is familiarly known in municipal law as a penalty armed with coercive power. And just as the penalty of the municipal code has behind it the authority of the state, so a true international sanction implies a means of enforcement resting upon the express or tacit consent of the society of states.

I. The Principle of Collective Sanctions

In the constructive work of international organization following the World War, this matter of arming with collective sanctions the covenants assumed by the parties to the new international order then set up, assumed primary importance. Never before had the problem of international sanctions been squarely faced by responsible statesmen; never, indeed, had its solution appeared to be so necessary to the peace of the world, and for two or three reasons.

The Anarchy of International Relations

In the first place, as has been pointed out elsewhere, the outbreak of the Great War demonstrated the essential anarchy of international relations. International law there was, to be sure; machinery of international intercourse, in some respects highly developed, also existed — the diplomatic and consular service, the Hague Permanent Court of Arbitration, bilateral treaties of arbitration, and increasingly frequent conferences dealing with matters of international concern. But when it came to the fundamental problem of keeping the peace by holding the disruptive forces of international society in check until rational agencies of adjustment could take command of the situation, no adequate machinery existed to deal with it. The nations of Europe were living under a régime incapable of protecting their rights, or what they considered their rights. Under like circumstances individuals take the law into their own hands; and so the nations appealed to the fundamental right of self-defense. In the absence of collective help, self-help was the only resort; international law and order, unsupported by the collective will of the international community, gave way temporarily to jungle law. The lesson was not lost upon the world.

Armaments No Guarantee of Peace

Another lesson of the War, also pointed out in another connection, was that a heavily armed world of nations means, at the best, an armed peace, and at the worst a world at war. Never had the futility of vast armaments as guarantees of peace been so tragically demonstrated. The problem of disarmament had been envisaged before, but chiefly as a matter of budgets; now it was seen that armaments went to the heart of the problem of war itself, and that no peace resting upon uncontrolled force alone is likely to endure. But so long as self-help is the only recourse of nations against aggression they will arm; or to put it negatively, they will not disarm until they can rely upon collective help in time of need. Thus the all-important armaments problem was seen to wait upon the solution of that of security, and security, in turn, upon more adequate sanctions.

The Sanction of International Force

Finally the theory was advanced that, in the last analysis, international sanctions must rest upon international coercion — either actual military force or economic compulsion. If war, as an exhibition of national force, is to be eliminated from international life, or placed under the ban of international government, it must be threatened with the hazard of international force, for such is the principle of law enforcement within every orderly state. This, at any rate, was the logic of the War, and the theory which was embodied in the Covenant of the League of Nations, as will presently appear; but is it a sound theory? The course of development of the League, which exhibits a tendency on the part of its members to weaken the theory by nationalistic interpretations of the Covenant, may be taken to indicate that the world is not yet finally convinced of its validity. Hence it may be instructive to review some of the considerations which still appear to weigh against the proposal to arm international sanctions with international force.

First, would not resort to international force be simply substituting universal war for local war, and so making the cure worse than the disease? Yes, if the assumption be that international force would actually be invoked in every situation which might result in war but for the threat of the sanction. But this assumption fails to give weight to the preventive influence of the sanction; its logic would be that hanging tends to prevent murder only as regards the individual hanged.

If international force can be efficiently organized and reliably guaranteed, so that it really places the power of the international community on the side of justice and peace, no single nation, no two disputing nations, would undertake to stand against it. International power will always be superior to national power, and, if dependable as an international police force, would rarely if ever need to be invoked against a recalcitrant state. Thus it does not become necessary to defend collective sanctions against the assumption that as a cure for war they mean more war, because the theory of an international police power involves no such assumption. The correct statement would be that the cure for internationally irresponsible national force is the definite threat of an overwhelmingly superior, responsibly directed, international force.

Is Force Compatible with Civilization?

But is not the very idea of a political régime based upon force incompatible with Christian civilization? And if so, what propriety is there in incorporating the principle into a new world order? If states will not voluntarily do justice and obey the law, so runs the argument, it is useless as well as immoral to attempt to coerce them into so doing. To this it may be replied that international government must deal with international realities. Force is neither moral nor immoral in the abstract, but only in its aims and purposes. Civilization will have outgrown the need of government by the time it becomes immoral to establish justice by force. Society as at present organized politically rests upon ultimate force — which, it may be anticipated, will become more and more purely theoretical as the occasions for its exercise become less and less frequent. However, it will be time to question the propriety of force in international government, on moral grounds, when the nations themselves relegate it to the museum of political antiquities.

Again, is there not a fundamental inconsistency in the idea of *enforcing* peace? The proposed League to Enforce Peace of the early war period [1] was ridiculed in some quarters because its name implied a resort to war to maintain peace. This, of course, is juggling with words. As well say that the ample war powers conferred upon the American federal government are inconsistent with one purpose of the new union, set forth in the preamble of the constitution, namely, to preserve the blessings of peace. Under municipal law the peace is kept by prescribing penalties, backed up by the power of the state, against violators of the peace. In other words, force is not resorted to in lieu of an appeal to law, but is reserved for the coercion of the violator of law. If domestic government may thus "enforce" peace, why not international society? [2]

Collective Sanctions and Sovereignty

But again, why should a state undertake to join forces with other states in the application of sanctions in cases with which it has no direct or immediate concern? To be more specific, with what propriety could a state, for example, assume collective responsibility for the observance of a multilateral treaty like the Kellogg Pact? Is it any business of one state, as an abstract proposition, whether another state keeps or violates its compacts? If not, then the theory of collective responsibility in international relations falls to the ground; and it comes to this, that a state's interest in the integrity of international law, whether customary or conventional, is circumscribed by its own immediate interests. Therefore it will intervene only when the law is violated to its injury.

Needless to say, this is a complete repudiation of the social concept; no civilized society could long exist under this assumption. Nor would the staunchest opponent of collective sanctions follow his logic to so bitter an end. He would, however, draw certain deductions from the essential qualities of the state. Independence connotes exemption from all external coercion save that traditional exhibition of force known as war, and this independence must be respected internationally. Again, it is argued, state sovereignty is inconsistent with the assumption of obligations in behalf of the general welfare — would be seriously impaired, indeed, by any such assumption. But surely the state, in the exercise of its sovereignty, must have the right to judge as to the best means of preserving its sovereignty and independence; and in adopting policies to that end, may decide that coöperation in the enforcement of international sanctions is a better guarantee of security than reliance upon its own coercive power. Such a policy could in no wise be repugnant to the fundamental nature of the state, or beyond its power. Thus the problem of international sanctions presents itself to each state, not as one involving the limitations of its sovereignty, but rather as a question of the choice of means to safeguard its sovereignty.

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[1] See Ch. XXI, Sub. I.

[2] G. Lowes Dickinson, *The European Anarchy* (1917), 142.

Finally, does not the authority which directs the application of collective sanctions take on the character of a super-state or super-government? And if so, does not the idea of a super-state necessarily imply a surrender of sovereignty, *pro tanto,* by the several states whose collective action has enthroned this political super-power? This, at any rate, is not the theory of the League, nor that of the two principal schemes — the Draft Treaty of Mutual Assistance and the Geneva Protocol — devised to supplement and strengthen the sanctions embodied in the Covenant; nor is it a necessary implication of international sanctions, which assume a partnership rather than a corporate character. Each state participates in the exercise of the enforcing power — is itself a constituent part of the agency of direction. Collective sanctions rest upon good faith rather than upon the principle of an irrevocable grant of power.

Sanctions Under the League Covenant

Whatever may be the sound theory relative to the sanctions of force, the catastrophic experience of the Great War inspired a very general sentiment in favor of undertaking to guarantee the observance of international law and international obligations by means of actual coercive measures. From this point of view, one of the chief problems in the development of international law after the War was the creation of effective material sanctions, or external guarantees. As Nippold, writing during the War, expressed it:

> Just as the tasks accomplished in the period before this war consisted in the main of the creation of a system of international law procedure, so now the new task to be faced by reason of this war consists in devising a system of coercive measures based on international law for the applica-

tion of this procedure, and especially for the observance of treaty stipulations — coercive measures in which the 'real guarantees' for the maintenance of peace demanded by the world today will find their external expression.[3]

This was the view, at any rate, adopted by the framers of the Covenant of the League of Nations, and it took form in certain specific provisions embodying the principle of collective sanctions.

The practical justification of the principle is to be found in Article XI of the Covenant, which declares that " any war or threat of war, whether immediately affecting any of the members of the League or not, is hereby declared a matter of concern to the whole League." This " concern," however, may not be felt equally by all members, hence the actual responsibility for the application of sanctions may be greater or less according to circumstances — a fact to be taken into consideration by the Council in proposing measures to protect the covenants of the League.

Under Article XII the members of the League agree to submit all disputes likely to lead to a rupture either to arbitration or judicial settlement, or to inquiry by the Council. They further agree to abide by any award or decision that may be rendered, or any report made by the Council if unanimous; and if a member resorts to war in disregard of these covenants, it then becomes liable to the application of the sanctions prescribed, on the express theory that war so resorted to shall be deemed war against all other members of the League. Thus in strict legal theory, when a member state joins in coercive measures against a covenant-breaking state, it is not proceeding against a state with which it is at peace; the two are legally at war, and the *casus belli* is the breach of certain treaty stipulations which declare the result of a violation thereof. The situation, then, is not that of a state making war upon another state merely because such other state is resorting to war against a third; rather it is the case of a state's undertaking to punish the violation of a treaty to which it is a party.

II. The Economic Boycott

League sanctions may be either economic or military — the boycott or the employment of military force. The boycott will be first considered. Judging from the context of the Covenant, the boycott constitutes the primary weapon of coercion; it follows immediately upon the wrongful resort to force. The members undertake forthwith to subject the offending state to commercial, financial, and social isolation. All trade relations with it are to be severed; all intercourse prohibited between the nationals of the covenant-breaking state and those of all other member states, and even those of non-member states. Moreover, the members agree that they will mutually support one another in these measures, in order to minimize the loss and inconvenience resulting therefrom, and in resisting any special measures aimed at any one of their number by the offending state.

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[3] *Development of International Law After the World War* (1923), 57. This writer reviews the opinions of publicists before and during the War in favor of coercive sanctions. *Ibid.*, 57–72.

The coercive power of such a boycott as the Covenant provides for, if made effective, can hardly be overestimated. The plight of a state subjected to it has been portrayed as follows: "No more vessels landing at or sailing from its ports, no more trains crossing its frontiers, no exports, no imports, no correspondence . . . an isolation that is complete, absolute . . . a revival of medieval excommunication." [4]

To these general prohibitions might be added others more specific but almost as drastic — exclusion from financial markets, discontinuance of payments on loans due the aggressor state, the suspension or cancellation of commercial treaties, exclusion from international unions such as the Universal Postal Union, etc. It is safe to say that no modern state could stand out against such devastating economic pressure. Even though it were capable of supplying its own arms and munitions, the havoc wrought behind its lines, in the prostration of all its industries dependent upon import and export, would paralyze its military arm. Indeed, no highly developed nation would dare hazard such a catastrophe.

From the standpoint of the general principles of international law, the economic boycott would mean the complete abandonment of neutrality as between the aggressor state and the boycotting states. It would impose upon the latter the negative duty of seeing to it that no economic aid or comfort was given the aggressor, and the affirmative duty to support economically the victim of aggression. For any member state to refuse or neglect to meet these obligations would be to weaken the sanction — more or less according to the economic resources thus made available to the aggressor or denied the state attacked.

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[4] M. Augustin Hamon, quoted by D. Mitrany, *The Problem of International Sanctions* (1925), 39.

Practical Weaknesses of the Economic Boycott

This consideration suggests some of the grave difficulties in applying the economic boycott. In the first place, its effectiveness depends upon its universality, and this, in turn, might be jeopardized either because important states stood outside the League, and were therefore free, legally, to continue economic intercourse with the covenant-breaking state; or because member states failed to make good their pledge of coöperation. Non-member states might, of course, go so far as to cut off commercial intercourse with the defaulting state, even though refusing to aid the state attacked; but this would be going far beyond the existing rules of neutral obligation, and perhaps beyond what could be expected. The temptation to continue trade relations with the belligerents, rendered especially lucrative by the market restrictions imposed by the boycott, would, it may fairly be assumed, often prove irresistible. Thus for the United States, as a non-member state, to be free to trade with a state under boycott, would be to weaken seriously the boycott; and so of any strong industrial country. This was foreseen and formally guarded against, for the Covenant pledges the members of the League to prevent " all financial, commercial or personal intercourse between the nationals of the covenant-breaking state and the nationals of any other state, whether a member of the League or not." But from the non-member's point of view this would mean an illegal interference with its sovereign rights, and probably war; and some members of the League might hesitate to press the issue that far. Such a situation would, to say the least, tend to divide League councils, and so to impair the unity of their action against the aggressor. Indeed, it is safe to say that, with important nations outside the League, the value of the economic boycott is problematical.

But aside from this, it has grave weaknesses in the present state of international relations. As with non-member states, so the temptation of member states to reap the benefits of a trade made doubly profitable by the closing of other markets, would be difficult to resist. Each state would be prone to suspect that its neighbors were yielding to it, and to act accordingly. The situation would put a severe strain upon the solidarity needful to make the boycott effective.

Again, it is clear that the sacrifices which the several members would have to suffer by reason of the boycott would vary greatly. Upon some, whose trade with the boycotted state was normally slight, the severance of commercial relations would inflict little hardship; while upon others, economically dependent upon markets or sources of raw material in the boycotted country, the burden would be heavy. This situation has been recognized by the League. The Second Assembly sought to minimize the weakness inherent in it by declaring that the Council might postpone the imposition of the boycott as to particular members of the League when satisfied that it is necessary to do so to " minimize the loss and inconvenience which will be caused to such members." While this discretionary power in the Council may be necessary to render the boycott practicable, it seriously weakens the force of the sanctions set up under Article XVI of the Covenant.

Furthermore, some members might be geographically so situated with reference to the boycotted state as to be exposed to retaliatory measures; while others, more remote, would be secure against attack. For example, for a weaker state to be obliged to close its ports to a strong naval power would be to risk serious injury; and under such circumstances it would be strongly tempted to look first to its own security.

Theoretical Efficacy of the Boycott

For these and other reasons doubt may well be entertained whether loyalty to the cause of international peace is strong enough, and League solidarity sufficiently great, to render the economic sanction effective. It has never been resorted to by the League, whose sole sanction has thus far been the force of public opinion; it has been deemed rather the " gun behind the door," to be employed only as a last resort. There is no denying its theoretical potency. Once its feasibility has been demonstrated, it will never need be invoked, for in an inter-related world like the present, economic isolation would be fatal. As a substitute for war it has obvious advantages, both ideal and practical; especially would it make for peace in that it would be favorable to the reduction of armaments. It is not to be assumed, however, that it could wholly supplant war, or preparations for war. The aggressor nation would resist it with arms, and would have to be met with arms. The maintenance of the boycott would require military force, especially in countries contiguous to the aggressor. So also, if any member state were disposed to become a covenant-breaker by refusing to coöperate, it would have to be dealt with by coercion.

The Covenant is curiously vague as to the organization and maintenance of the boycott. To the Council no specific duties are assigned in that regard. As the Covenant now stands it would be for the members of the League to build up their coördinating machinery, either through the Council or by creating an economic General Staff, so to speak. But making due allowance for the very grave difficulties in its enforcement, the economic boycott as prescribed in the Covenant on the whole strengthens the traditional sanctions of international law. It is the very embodiment of the League ideal — collective responsibility — and will become more promising the more that ideal becomes the working principle of the League. Especially will it be greatly fortified by the accession to the League of the states now remaining outside.[5]

III. Military Sanctions

The Covenant contemplates the necessity, or the propriety, of resort to military force against a covenant-breaking member state, but its provisions on this point are rather vague and inconclusive. Article XVI makes it the duty of the Council, in case the need of coercive action arises, " to recommend to the several governments concerned what effective military, naval, or air forces the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."

In contrast with the obligation expressly imposed upon the members to undertake a boycott, these provisions leave the contribution of each to the common undertaking optional with them. The Council is given no power to requisition military forces; the League has no such forces at command. The members are under no covenant to adopt the recommendations of the Council. The efficacy of the military sanction depends, therefore, upon the exercise of discretion by the member states, and this, in turn, upon a variety of uncertain factors. The interests of member states would be unequally affected by the dispute. International politics — existing treaty relations between the covenant-breaking state and member states, their interdependent economic relations, the international aspects of the particular dispute — would inevitably enter into the situation. The natural indisposition of governments to commit themselves to military measures against a state whose breach of the Covenant did not immediately affect their interests, would temper their zeal to vindicate the League. So also, members might naturally be at odds over the fairness of the recommendations made by the Council, taking into consideration their available forces, their geographical location and economic resources, and other factors bearing upon the just extent of their participation in the measures to be taken against the covenant-breaking state. Obviously such considerations as these suggest the possibility of friction at numberless points in the mobilization of military force to vindicate the covenants of the League.

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[5] On the Economic boycott generally see H. E. Houston, *Blocking New Wars* (1918).

Thus the military sanction, as well as the economic, is of problematical value. Both recognize a principle of fundamental importance, namely, that all nations are interested in the maintenance of peace, and should assume responsibility therefor. The weakness of the Covenant is that it does not vest power to apply its sanctions in any League agency, but leaves them largely to the good faith of the members, whose duty in the premises, whether legal or moral, is itself backed up by no sanctions. It was to strengthen the moral obligations of the members in dealing with breaches of the Covenant, that the plans later discussed, the Draft Treaty of Mutual Assistance and the Geneva Protocol, were proposed.

The League Sanctions and Non-Member States

Perhaps the severest test to which these sanctions could be subjected would arise in cases where it might become necessary to proceed against a non-member state which, having been invited to accept the obligations of League membership in a pending dispute, refused to do so.[6] Such a state would be guilty of no breach of the Covenant on its part, for it never assumed the obligations of the Covenant. The case presented, then, would be a proposal to employ collective force against a state which stood upon its fundamental right to resort to war against another state. In other words, it would amount to coerced membership in the League for the purposes of the quarrel, and thus the denial of a state's right to elect whether or not it shall join the League. If the case assumed were that of a quarrel between a member and a non-member state, the League might justify coercion of the latter as a means of protecting the former; but even this justification would fail if both disputants were non-members and both refused the invitation of the League. In such a situation the League would be forced back upon the principle of the European Concert of Powers, namely, that it was charged with collective responsibility for the peace of the world.

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[6] Under Art. XVII.

IV. Interpretation of the Covenant Sanctions

The League sanctions have been discussed with reference to their application to cases where a member state refuses to submit its dispute to pacific means of settlement, or having done so, refuses to abide by the result and goes to war against an adversary state which is ready to abide by it. They apply also, but not expressly, to violations of Article X of the Covenant, and to situations arising under Article XI. Article X obligates the members of the League to "respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League." The phraseology of this famous article has provoked endless discussion. Does it mean that each member of the League agrees, for itself, to respect the sovereign rights of every other member? Or does it go beyond this negative significance, and positively pledge each member to safeguard the territorial integrity and the independence of all other members of the League? If the latter be the correct interpretation, the duty of protection is not supported by any specific sanction; for the article proceeds to declare: "In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled." In the last resort the means advised by the Council would presumably be those prescribed as applying to covenant-breaking states under Article XVI.

Article XI simply declares it to be the duty of the League to safeguard the peace of nations, empowering it, in case of war or the threat of war, to "take any action that may be deemed wise and effectual" to that end. The action contemplated here would presumably be, first, an attempt by the Council to settle by conciliation the dispute underlying the actual or threatened war, and second, on the theory that one or both parties refused inquiry by the Council, a resort to economic or military sanctions.

It is to be noted that the system of sanctions embodied in the Covenant is not of general application — that is, it may be invoked only against covenant-breaking states. It still leaves the general body of international law unarmed with collective coercion. Only when a violation of international law, or of a treaty, results in a dispute likely to lead to a rupture, do the League sanctions apply. Technically, indeed, the international wrongs to which these sanctions are directed are breaches of the League covenants, not the violations of international right upon which the disputes may be based.

Criticism of the League Sanctions

The foregoing analysis is based upon the text of the Covenant. Certain ambiguities in the broad general provisions of Article XVI have been pointed out as bearing upon the practical application of the sanctions. But no sooner was the League organized than criticism began to be directed to the whole covenant scheme of sanctions. Member states began to take counsel of their fears, one group solicitous lest they had committed themselves too far in agreeing to the sanctions; another group, composed of the more vulnerable members, equally apprehensive for fear the sanctions would prove too weak to protect them in crises. The former position was stressed by the United States in the Senate debates on the Versailles Treaty, and was taken by some member states somewhat similarly situated. The League theory, that war is a world-wide concern, might be conceded, but it appeared to some of these states that if the Covenant committed members of the League to the legal duty of waging war anywhere and everywhere, leaving them no option in the matter, it was too drastic a commitment. In any event they felt that the League could become an instrument of peace, not by stressing the element of force in international relations, but rather by promoting coöperation and understanding between nations.

Within the League the controversy related, not so much to proposals to change the Covenant, one way or the other, as to the proper interpretation of its provisions. Did it mean all that it appeared to say on the subject of sanctions, or was it to be construed liberally, so as to give the members wide discretion in responding to the proposal of sanctions?

Interpretation of Article X

Article X, which guarantees members against impairment of territory or independence as the result of aggression, was the first point of attack. This article was bitterly opposed in the United States Senate, because it was thought to commit members to a policy of war to maintain the *status quo* rather than to one of peace. True, the Council could only " advise upon the means " whereby the obligation imposed by the article should be fulfilled; but did not the provision give rise to a moral obligation to follow this advice? And by what considerations would the Council be guided in formulating its advice? Debate on the article came to a head in the Fourth Assembly, of 1923, when an interpretative resolution failed of adoption only because of the negative vote of Persia. This resolution declared it to be the duty of the Council, in advising as to the application of military sanctions, in consequence of aggression or danger or threat of aggression, " to take account, more particularly, of the geographic situation and of the special conditions of each state."

Then followed this most significant provision:

> It is for the constitutional authorities of each Member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of Members, in what degree the Member is bound to assure the execution of this obligation by employment of its military forces.

Although this resolution failed of unanimous approval, it may be taken as expressing the sense of the League as to the interpretation of Article X, and as likely to control the action of the member states in any case arising thereunder. Obviously it weakens the obligation of members under this article; and that the Assembly so construed it is indicated by the final paragraph of the resolution, which is to this effect:

> The recommendation made by the Council shall be regarded as being of the highest importance, and shall be taken into consideration by all the Members of the League with the desire to execute their engagements in good faith.

Interpretation of Article XVI

The peremptory character of the provisions of Article XVI concerning the economic boycott has been referred to. By its terms it contemplates the establishment, forthwith, of an air-tight blockade against the covenant-breaking state, completely severing its foreign commercial contacts, and the intercourse of its nationals with those of other states. Taking these provisions literally, the members of the League would have no option but to join in the boycott. Some reasons have been suggested above why this requirement might put a severe strain upon the member states — reasons which at length prompted them to make these provisions less peremptory by interpretation. In the Second Assembly a resolution was adopted which went to the limit in this direction. It declared it to be the right of each member to decide for itself, whatever may have been the decision of the Council, whether a breach of the Covenant has been committed, and therefore, it would seem, whether it is bound, under Article XVI, to join in an economic boycott.

Further, the resolution placed a liberal interpretation upon the first paragraph of Article XVI, which declares a resort to war in disregard of the Covenant *ipso facto* an act of war against all the other members, by declaring that a state of war is not created by the unilateral act of the defaulting state, but only a situation which entitles the other members " to resort to acts of war or to declare themselves in a state of war with the covenant-breaking state." In other words, even if the members decide that a breach of the Covenant has been committed, they need not interpret it as giving rise to a state of war legally necessitating the imposition of a boycott. Thus the economic boycott appears to have been made optional rather than obligatory.

Still further clarifying procedure under Article XVI, the Second Assembly, as already pointed out, declared that as to particular members, the Council might " postpone the coming into force of any of these measures for a specified period where it is satisfied that such postponement will facilitate the attainment of the object of the measures, . . . or that it is necessary to minimize the loss and inconvenience which will be caused to such members." It is easy to see that with the Council clothed with such powers of discrimination, member states likely to be seriously affected by a boycott will bring heavy pressure to bear upon it for postponements, and that thus the door will be opened for uncertainty and possible discord.

This resolution, the substance of which has been embodied in an amendment to Article XVI now in process of ratification, may doubtless be taken to embody the construction that will be put upon that Article should action be taken thereunder. Needless to say, it weakens fundamentally the economic boycott as a League sanction. To give member states the right, each for itself, to decide as to the occasion for a boycott is to jeopardize the unity of action by which alone the boycott can be made effective. To be sure, the resolution reminds the members that:

> The fulfilment of their duties under Article XVI is required from Members of the League by the express terms of the Covenant and they cannot neglect them without breach of their Treaty obligations.

But a convenient loophole of escape from these obligations is opened up when each member is virtually made the judge of its own duty in the circumstances of each case.

Sanctions and the Limitation of Armaments

When the League took up in earnest the question of the limitation of armaments, these League sanctions — the economic boycott and military action — were seen to be inadequate to insure peace. In that line of inquiry the question of their sufficiency presented itself as one of security against aggression. It became clear that nations would not impair their military and naval strength until assured that their lessened capacity for self-help against aggression would be made good by some kind of joint aid in case of attack; in other words, that the problem of disarmament was indissolubly bound up with that of sanctions.

Hence the League movement for the limitation of armaments has concerned itself, in considerable part, with the problem of strengthening the sanctions prescribed in the Covenant against a covenant-breaking state — in other words, of substituting dependable collective action against an aggressor state for the traditional self-help that has justified, if not necessitated, powerful national armaments.

Accordingly the League has discussed the question of more effective sanctions as a necessary preliminary to the limitation of armaments; and therefore consideration of the two notable attempts to deal with League sanctions — the Draft Treaty of Mutual Assistance and the Geneva Protocol — will be taken up more at length in connection with the League armaments movement.[7] They should, however, be summarized here for the interesting light they throw upon the general problem of equipping international government with adequate executive power.

V. Plans to Strengthen the League Sanctions

Schemes to Strengthen the League Sanctions

The League sanctions are inadequate not only because, as has been seen, their efficacy depends upon a rather ideal unity of interest and action as between the member states, but also because they do not interpose an unbroken front against aggression. The Covenant places upon member states the binding obligation to resort, in the first instance, to peaceful means of settlement, but not the same universal obligation to stand by the results thereof. In at least two situations states may elude the obligations of the covenant and resort to war: (1) In cases where the Council fails to reach a unanimous report on the dispute, in which event the only hope of preserving peace lies in such action as the members of the League may voluntarily take in the premises; and (2) in cases where the Council reaches unanimous agreement, and makes recommendations as to the just and proper settlement of the dispute, but the parties ignore the Council, relying upon the fact that it has no authority to compel the members to back up its recommendations. In that view its decision might have great moral weight, but would lack coercive validity.

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[7] See the following chapter, and citations there noted.

The general theory of the Covenant is that any state which refuses to seek settlement of its international disputes by peaceful means, or refuses to abide by the outcome of such means, is an aggressor, and should be restrained by international action. But in concrete cases of resort to force, it is exceedingly difficult to determine which party is the aggressor; indeed, expert opinion on that point may differ long after the event. The League is doubly weak in dealing with an aggressor state: It provides no satisfactory method of determining the fact of aggression, and it sets up no agency armed with plenary power to restrain or punish aggression, once the guilt of a state has been established. The Council may "advise" as to the means of meeting the aggression, under Article X; it may also "recommend" to the governments concerned as to their contributions to the military forces to be employed against the covenant-breaking state, under Article XVI. Thus it may propose — it cannot command; it has influence rather than power. There remains the rather uncertain expedient of the economic boycott.

Draft Treaty of Mutual Assistance — Geneva Protocol

Now to mend this defect in the League machinery, the Draft Treaty of Mutual Assistance, debated in the Fourth Assembly (1923), proposed to give the Council power to decide which state was guilty, and which the victim, of aggression, and to determine as to what forces each state should place at its disposal. The advisory function of the Council would thus become a power of decision. This plan was rejected for reasons pointed out in Chapter XXXI, among them: (1) That the authority it vested in the Council was too drastic to be reposed in a political body; (2) that it would oblige nations to keep themselves equipped to wage war upon an aggressor when called upon; (3) that it would greatly increase the responsibilities of membership in the League; and (4) that it was too comprehensive a scheme to be practicable in the present state of international relations.

The next Assembly, the Fifth, returned to the problem. Its proposed solution took the form of the Geneva Protocol, which stressed compulsory arbitration more, and sanctions less, than did the Draft Treaty of Mutual Assistance. States accepting the Protocol would bind themselves to submit all disputes either to voluntary arbitration, to the World Court, or to decision by the Council; or failing a unanimous decision by the Council, to a Committee of Arbitrators to be set up by the Council. The obligation to resort to one of these methods of settlement was made absolute. Against a state failing to live up to this obligation the Council could invoke the sanctions provided by the Covenant. But in spite of this obligatory pacific procedure, states might resort to war. In that event it would become necessary to determine which of two warring states was the aggressor, and which acting on the defensive; for no strictly defensive war could be outlawed or penalized by this or any other scheme, the purpose being to make self-defense unnecessary by restraining and punishing aggression.

It was deemed necessary, therefore, to denounce war as an "international crime," and in order to enable the League to deal with it, to provide some means of determining which of two states involved in a dispute is the aggressor. This was worked out on the basis of certain presumptions of aggression, which were to be held valid until unanimously reversed by the Council. Chief among the states of fact from which a presumption of aggression would arise was a refusal to accept and abide by the procedure for the pacific settlement of disputes prescribed by the Protocol.

The Protocol further provided for determination by the Council, in cases not covered by these presumptions, of the fact of aggression; also for possible cases where the Council could not arrive at a unanimous decision. The net result was that, under the Protocol, the determination of the fact of aggression rested largely upon automatic tests — that is, was based upon undisputed states of fact rather than upon the decision of the Council. There remained the all-important matter of sanctions. On this point the Protocol provided:

> These obligations shall be interpreted as obliging each of the signatory states to co-operate loyally and effectively in support of the Covenant of the League of Nations, and in resistance to any act of aggression, in the degree which its geographical position and its particular situation as regards armaments allow.

While these provisions left much to the discretion of the signatory states, because each must be the judge, in the last analysis, of what constitutes " loyal and effective " coöperation, they marked a distinct advance, in principle, over the Covenant, as interpreted by the Assembly. Under them, while each state was to be the judge of the manner in which it should meet its obligations, it was no longer the case that each might judge as to the existence of those obligations. They were binding, and had moral weight as such, even though it was left to each state to decide as to how it should make them good; and while they were armed with no sanctions, to fail to meet them would constitute a violation of the Protocol. For reasons indicated in Chapter XXXI the Protocol was not adopted; so that apart from the light thrown upon the whole problem by the efforts of the Assembly to solve it, the sanctions of the League stand as set forth in the Covenant.[8]

Treaties of Mutual Guarantee

Following the rejection of the Protocol, the Locarno Treaty of mutual guarantee, and numerous bilateral treaties of guarantee and mutual security, were entered into by the European Powers. The parties to these treaties include only part of the members of the League, so that the treaties cannot be taken to be a general movement within the League. But most of them declare, in varying terms, that they are intended to be within the framework of the League, and to strengthen the sanctions that would be brought to bear in case of a breach of the peace. Obviously these treaties imply lack of full confidence in the efficacy of the League sanctions; indeed, in principle they are devices of self-help in the spirit of pre-war diplomacy. They may be looked at from two points of view: either as evidences of a lack of coherence in the League, a disintegrating tendency that does not promise well; or as practical means of effectuating the purposes of the League without weakening its structure. The test of experience alone will disclose the real relation between them and the League.[9]

VI. General Estimate of League Sanctions

The problem of an adequate international executive power still remains unsolved; apparently it must wait upon the further progress of international government. In the ordinary intercourse of states, international law is well enough observed, supported as it is by the laws and executive agencies of the several states, and by a normally law-respecting public opinion. It is in the international crises threatening war that international government exhibits its double weakness — the meagerness of its code of law, which leaves untouched whole areas of friction, and its inability thus far to develop obligatory substitutes for war.

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[8] On the Draft Treaty and the Geneva Protocol see Bruce Williams, *State Security and the League of Nations* (1927), Ch. V. See also article by Professor Manley O. Hudson in 3 *Foreign Affairs* (1924), 226.

[9] On this point see Pitman B. Potter, *Introduction to the Study of International Organization* (3rd Ed., 1928), 441.

League Compared with the Balance of Power and the Concert of Europe

However, the League system of sanctions marks a distinct advance in international practice. It is based upon the principle of collective responsibility for peace, and is definitely formulated in rules to which the main body of states have assented. Granted that in the exigencies of international politics, or when swayed by the spirit of nationalism, the members of the League may prove faithless to their undertakings, the fact remains that thus they will stand as covenant-breakers, and be put to the defense of their policies. The real achievement of the League in strengthening the sanctions of international government will appear from a comparison of its principles with those underlying the Balance of Power and the European Concert. In the first place, the basis of those devices of international control was political, never formally legal. The Balance rested upon a fortuitous grouping of powers, unstable, kaleidoscopic, primarily motived by self-interest, functioning only when prompted by distrust, while the Concert was a self-constituted group of Powers whose purposes were never quite single, whose actions were often paralyzed by the antagonisms of its members.

In the second place, neither the Balance nor the Concert made any pretense of holding a mandate from the more numerous group of lesser powers; they had no representative character, unless one might be implied from the acquiescence of the weaker states, which had no option but to acquiesce. In the third place, the Balance recognized but partially the principle of collective responsibility, its chief aim being to prevent, by the superior power of one state or group of states, the dangerous aggrandizement of another group or state. The general body of states were mere pawns in this game of equilibrium. The Concert did assume to act for the common good, but the definition of the common good was a prerogative of the Concert itself. The League sanctions, in principle at any rate, are in substantial contrast with those of the Balance and the Concert. They rest upon a definitely formulated constitutional basis; they derive their authority from the consent and support of the general body of states; and they embody the principle of collective responsibility for the peace and well-being of international society.

Sanction of Public Opinion Strengthened by the League

Finally, public opinion as an international sanction has been powerfully reinforced by the League. The weakness, internationally, of this force which has become so potent nationally, has been that it lacked adequate organs both of formulation and of expression. Resort to international conferences had been growing in frequency for some decades before the War, and steadily influencing international thought; but it took the form largely of gatherings for the consideration of special interests, and except as continuing bodies were created to perform certain administrative functions, it developed no permanent organization. Especially was there a lack of any platform on which matters of general international interest could be debated — a free forum for the spokesmen of all nations.

The League supplies this need. Its consultative bodies, the Assembly and the Council, the former well-nigh universal in its membership, the latter quite broadly representative, both meeting periodically at fixed and frequent intervals, serve as clearing-houses of international opinion. In the Assembly, in particular, causes of international friction may be dragged out into open debate, while through the publicity of its proceedings the whole world listens. The value of such a forum of international discussion can hardly be overestimated. Thereby governments may be called to account, at the bar of public opinion, for policies that make for international friction and distrust. Responsibility for potential causes of war may be fixed, or at least openly debated, and the governments concerned put upon the defensive; while the moral influence of the League, thus afforded a means of expression, may be brought to bear upon states which, otherwise unrestrained, might go to war.

A member state understands that if it violates the letter, or even the spirit, of the Covenant it risks the moral condemnation of the world; and while this sense of accountability may not restrain it from pursuing policies of injustice or aggression tending towards war, it is a substantial makeweight on the side of peace. And it is not unreasonable to anticipate for the League a growing influence as formulator and mouthpiece of international public opinion.

It is easy to exaggerate the rôle of force in the domain of national law, and still easier to do so in the relations of states. Treaty engagements between nations, and the observance of the rules of international law, ordinarily rest safely upon good faith — the confidence of nation in nation. To appreciate the force of this imponderable sanction it is only necessary to reflect that the whole structure of modern business largely rests upon it, as does the assurance, nowadays taken almost as a matter of course, that nations will meet their financial obligations. How far beyond the realm of influence into that of force it is wise for the League to undertake to go is a highly debatable question. However it may be in theory, it is safe to say that as a practical matter, with the society of states constituted as it is, the League will seek its objectives, in the main and until it attains a more assured authority than it now enjoys, through counsel and persuasion rather than through force.[10]

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[10] Lord Parmoor in 123 *Contemporary Review* (1923), 35.

CHAPTER XXXI

THE ARMAMENTS PROBLEM AND THE LEAGUE

Chapter XX reviews briefly the international efforts made prior to the World War to deal with the problem of armaments. In the main they were abortive; indeed, they were quite barren of tangible results. In no material way did they affect the actual military or naval policies or programs of the Great Powers; generally speaking, not a soldier was returned to civil life, nor a battleship dismantled. On the contrary, armaments were steadily augmented until, with the outbreak of the Great War, they stood at a point of unprecedented size and efficiency.

It was clear that the problem could not be solved by mere resolutions of international conferences, or the diplomatic exchange of amiable sentiments; that on the contrary it involved the most basic principles of international relations, with which statesmen must come to grips if any headway was to be made. Superficially it is simple enough — a mere matter of arithmetic; practically it is extraordinarily complicated. Pre-war diplomacy, indeed, had merely stated the problem. It remained for a world chastened by the tragic consequences of the earlier failure to solve the problem to return to it with some appreciation, not only of its vital importance but of its fundamental difficulties.[1]

The general attack upon the problem resolved itself into two closely related campaigns: One against the traffic in arms and munitions of war, the other for the limitation of armaments. At first carried on as distinct movements, they have lately tended to merge, as it became more clearly apparent that they were really two aspects of the same fundamental problem. The former will be first considered.

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[1] No attempt will be made to discuss, or even to state, the technical elements of the disarmament problem. Material for such a study will be found in the books cited at the end of this chapter, and in other similar works. The literature on the subject is quite voluminous. For an interesting discussion of the difficulties of the armaments problem see James Bryce, *International Relations* (1922), 214 ff.

I. TRAFFIC IN ARMS AND MUNITIONS OF WAR

Nations which lack the resources, or the industrial capacity, to produce their own armaments, naturally go into the markets of the world to supply their needs. The demand for armaments before the World War was so great that some of the producing nations, even, could not keep themselves supplied, and became purchasers. The traffic thus created fell into the hands of private enterprise; and it has admittedly been of evil influence in international affairs, because it has resulted in the organization of powerful industrial groups which derive gain from war and the threat of war, not only in supplying their own governments with munitions, but in their trade with foreign nations. In Great Britain before the War two or three great combines handled the British armaments trade.[2] In Germany the well-known Krupps for many years did a flourishing business in the manufacture of arms, both for domestic use and for export; and in France and other industrialized nations private companies supplied their own governments with arms and munitions, and exported their surplus products. Tragically enough, arms exported from some of these countries were later turned against them in the Great War.[3]

The foregoing refers to the private arms traffic in time of peace. Until comparatively recent years this traffic has been unregulated and unrestricted by any sort of international agreement. Governments have freely permitted their domestic producers to dispose of their goods wherever they could find a market, even in undeveloped regions where the natives would almost certainly utilize them in inter-tribal war, or in uprisings against the government in control of their territory. Nor has there been, with minor exceptions, any restriction upon the right of governments themselves to participate in this trade; and they have done so to a considerable extent.

The Arms Traffic and Neutrality

In time of war the situation is somewhat different, because of the obligations imposed upon neutral nations by international law. It would be a breach of neutrality for a neutral state to supply a belligerent with arms during the progress of the war, however good a customer it might have been before. But the neutral government is under no legal obligation whatever to prohibit its citizens from exporting arms and munitions to any or all of the belligerents. The traffic is made more hazardous during war time than in peace by the legal right of either belligerent to capture and confiscate cargoes of such merchandise taken on the high seas en route to the other. The effective exercise of this right, however, obviously depends upon the naval strength of the respective belligerents, being nullified for one if the other gains command of the seas.

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[2] For details see C. Delisle Burns, *International Politics* (1920), 134 ff.

[3] *Ibid.*

This was the case during the World War, when American manufacturers exported enormous quantities of arms and munitions to the Allied countries, being able to do so because of the undisputed naval supremacy of Great Britain. The Central Powers protested against the traffic as constituting a breach of neutrality, in that it resulted to the sole advantage of their enemies. The Government of the United States took the ground, however, that the enjoyment by the belligerents of unequal benefits from the traffic in no wise affected its well-recognized legality.[4] This position did not escape criticism at home, on moral grounds. It was said to be inhuman and unchristian to permit the exportation of goods to be used in human slaughter; but unquestionably the government stood upon solid legal ground. However, the issue thus raised stimulated discussion of the whole subject of the international trade in munitions, both in peace and war, not only from the moral standpoint, but as a factor in the problem of preserving the international peace. It is the latter aspect of the question which falls within the limits of this study.

Much overstatement is indulged in regarding the influence and activities of the manufacturers and exporters of arms in promoting war. But making due allowances, it is a safe assumption that, like other manufacturers, they are alert to stimulate the market for their goods. Whether or not they do so by corrupt legislative influences, by the use of newspaper propaganda secretly purchased, or by perfectly above-board methods, is largely beside the point.[5] The fact remains that their business thrives on war and preparations for war; that they are tempted, for advertising purposes, to create an international atmosphere favorable to suspicion and fear, and that therefore they cannot be genuinely on the side of peace.

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[4] On the legality of this trade see address by Lester F. Woolsey before the American Society of International Law, *Proc. for 1921*, 28.

[5] For citation of instances of resort to questionable methods of promoting the munitions trade see R. L. Buell, *International Relations* (Rev. Ed., 1929), 519 ff. The activities at the Three-Power Naval Conference of 1927 of one William B. Shearer, who claimed to have represented certain American shipbuilding interests, have lately been under investigation by a committee of the United States Senate.

Measures to Restrict Trade in Arms and Munitions

Before the World War the admitted evils of the traffic in arms and ammunition with certain backward regions of the world had challenged the attention of the Western Powers. The area most dangerously affected was Central Africa, where imported firearms in the hands of the natives had been employed not only in tribal warfare, but in rebellion against Western domination. The Brussels Act of 1890 for the suppression of the African slave trade, signed by seventeen states including the United States, prohibited the sale of firearms and ammunition, except under certain designated conditions, within the zone included between the twentieth parallels of North and South latitude, or the whole of Central Africa.

Other international agreements of more limited scope relating to the traffic were subsequently entered into from time to time. In 1919 the St. Germain Arms Traffic Convention was signed by twenty-three states, including the United States, its purpose being to prohibit the export from Europe of the vast accumulation of " war arms " like artillery on hand at the close of the War, except such trade as might be licensed for governmental purposes; also to prohibit the importation, except under governmental control, both of such war arms and of ordinary arms and ammunition into certain backward regions — embracing the larger part of Africa, Arabia, Persia, and the former Arab parts of the Turkish Empire; including also a maritime zone covering the Red Sea, the Persian Gulf, and the Gulf of Aden.

The convention also provided for publicity for such traffic as it permitted, through the agency of an International Office of Control under League supervision. The United States declined to ratify this convention and therefore it failed of adoption, the other arms manufacturing and exporting states taking the position that they could not thereby restrict their own trade while leaving the United States free to engage in the traffic. Thus the matter stood when the League of Nations came into existence. In Article VIII of the Covenant " the members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections," and it is made incumbent upon the Council to advise

> how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

International Regulation a Complex Problem

In this task, as well as that concerning national armaments, the Council was given the assistance of the Permanent Commission provided for by Article IX of the Covenant. The foregoing provision suggests some of the grave difficulties of the problem thus presented to the Council. Nations differ widely in their industrial development and their productive capacity. Some lack the technical skill and organization to supply themselves with the wherewithal to equip a modern army, especially when, as now, the machinery of war has become highly scientific. To supply such nations means a lucrative trade for other nations better equipped to fabricate the paraphernalia of war.

Again, who shall determine the " necessities " of states from the standpoint of their " safety " in the matter of the manufacture or importation of arms and munitions? To leave this determination to any external authority would be thought to jeopardize the sovereign right of self-defense; and to reach a general agreement on the basis of what each state deems its necessities to be is a difficult undertaking. The League promptly addressed itself to the problem. In the course of a discussion in the First Assembly, of 1920, attention was called to the necessity of preventing the vast accumulated surplus of munitions of war from passing into the disturbed regions of the world and there causing trouble. Referring to the arms traffic convention (the convention of St. Germain mentioned above) its value as a civilizing instrument was stressed, and regret expressed that the attitude of the United States, where arms are manufactured on a large scale, had prevented the full execution of the convention. Nevertheless, the Assembly strongly urged all governments to ratify or adhere to the convention, and requested the Council to invite its competent commissions to study the problem.

Proposals of the Temporary Mixed Commission

The Temporary Mixed Commission[6] submitted to this Assembly certain measures as likely to render control of the traffic more effective, among them the following: (1) The prohibition of all export of arms without a special license from the exporting country; (2) the prohibition of all import of arms without a license from the government of the importing country, such licenses to be published, perhaps, by the League of Nations; (3) no munitions or implements of war to be manufactured without a government license, and, possibly, that such licenses should be published by the League of Nations; (4) armaments firms to publish, at stated intervals, complete reports on their financial situation, and any contracts entered into by them. Other proposed measures were intended to preclude non-nationals from holding stock in private armaments firms, or being granted patents relating to munitions or implements of war; to prevent persons interested in armaments firms from publishing newspapers, or holding stock in companies publishing them; and to prohibit a person interested in an armaments firm from holding stock in similar concerns in other countries.

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[6] A Commission set up by the Council to coöperate with the Permanent Commission provided for by Art. IX of the Covenant in dealing with armaments problems. See *post,* Sub. III.

At the request of the Third Assembly, of 1922, the Council sought to learn from the United States the conditions upon which it might be disposed to coöperate with other states in solving the serious problem of the private manufacture of arms and control of the traffic in arms. During the Fourth Assembly the reply of the American government was received; it reiterated its objections to the St. Germain convention, the more important of which were that the convention would prohibit the export of arms to states not parties to it, and that it did not limit the traffic as between governments; in other words, it went too far in one direction, and not far enough in another. The United States also objected that the convention placed the supervision of the traffic under the control of the League.

The Geneva Convention of 1925

It became clear that without the coöperation of all the more important industrial states, and especially those which had developed a productive arms and munitions industry, the St. Germain convention could not be made effective. Accordingly the Fourth Assembly recommended that the Temporary Mixed Commission be invited to prepare a new convention or conventions to replace that of St. Germain, and in such form as to be acceptable to all arms-producing countries, but with alternative proposals " which might be adopted by some of the producing powers even if others refused their cooperation." It also recommended that the United States be invited to coöperate with the Commission in preparing such draft conventions. This invitation was accepted, and during 1923–1924 a draft convention was completed and communicated by the Council to all governments. In due time the Council summoned an international conference which met at Geneva in May, 1925; it was attended by the United States and other non-members of the League. The result of this conference was an elaborate convention covering all important aspects of the arms trade.

The delicate question of supervision of the traffic was settled by substituting for international control — one of the grounds of American objection to the St. Germain convention — a set of provisions concerning export licenses, and a system of publicity intended to be preliminary to a general system of armaments publicity. War material is divided into five categories, with special provisions relating to each; the scheme of prohibited zones embodied in the St. Germain convention is continued with modifications, and provision is made for judicial or arbitral determination of disputes as to the interpretation or application of the convention. It is to come into force after ratification by fourteen powers.[7]

The League organizations had already discovered, and it clearly appeared in the discussions of this conference, that the control of the private manufacture of arms, and the supervision of the traffic in arms, are closely related questions. Producing countries would not be reached, in supplying their own governments with arms and munitions, by the publicity measures applicable to the traffic whereby the non-producing countries are supplied. In recognition of this point of view the Final Act of the conference declared the convention to be an important step towards a general system of international agreements concerning arms and munitions, and recognized the need of early consideration of the international aspects of the manufacture of arms, ammunition, and implements of war. Apparently in contemplation of the results of further study of the latter problem, the Geneva Convention of 1925 has not yet been ratified by states enough to bring it into force, although signed by some thirty states.

II. PRIVATE MANUFACTURE OF ARMS AND MUNITIONS

To the problem of mitigating the evils attendant upon the private arms industry, Article VIII of the Covenant of the League, already quoted, is particularly directed. It is as vital as that of the arms traffic — more vital, indeed. So long as governments permit unrestricted manufacture, the product will find its way into the channels of trade; and so long, also, will the industry be a disturbing factor in international relations. To prohibit entirely the exportation of arms and munitions would be to compel countries which have potential productive capacity to develop an arms industry, and to place countries which lack such capacity at the mercy of those which have it. Thus apparently both manufacture and export must be tolerated; and to subject either to effective international control is a delicate matter because it raises questions primarily of domestic concern.

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[7] For a brief history of this Convention, and an analysis of its provisions, see *League Handbook: The Reduction of Armaments and the Organization of Peace* (Rev. Ed., 1928), Part 2, Ch. I.

The First Assembly invited the Council to have the question studied by its competent commissions. In the course of that study two solutions of the problem were proposed: That of absolute prohibition of manufacture, and that of control. The former, certain to be opposed by the non-producing states, was deemed by the Temporary Mixed Commission inadmissible. Accordingly the Commission made proposals to the Assembly looking to regulation, and proceeded to prepare a tentative draft convention under instructions from the Assembly. Divergent views were held in the Commission as to the scope of control necessary to eliminate the evils of the traffic. A minority, made up mostly of labor members, strongly favored organized international control; the majority stood for national control under a system of licenses, and official publication by the governments of information concerning such licenses.

In 1926 another draft was prepared by a committee of the Council. In the course of its preparation conflict of opinion developed on two fundamental questions: First, should supervision extend only to private manufacture, or embrace state manufacture as well? Second, should supervision be national or international? The Council Committee attempted to reconcile these views by restricting control to manufacture prosecuted in establishments of which the state is not the sole proprietor, but extending publicity to all manufacture, state as well as private. The 1926 Assembly was impressed by the intimate connection between the problem of supervision over the private manufacture of and traffic in arms, and the general problem of the reduction of armaments. To broaden the scope of the inquiry in harmony with this view, the Council set up a special commission of all its members, also inviting the United States and the Russian Soviet Union to be represented. The United States accepted the invitation. The Assembly of 1927 requested this special commission to coördinate its activities with those of the Preparatory Commission for the Disarmament Conference. Thus the movement to place the private manufacture of arms and munitions under international control is considered a part of the more comprehensive movement to limit armaments. In August, 1929, the Commission drafted a convention, to be reported to the Council, providing for the supervision of the private manufacture, and publicity for all manufacture, of arms, ammunition, and implements of war.

III. Limitation of Armaments

Ever since its organization the League has treated the problem of the limitation of armaments as one of its fundamental interests. No other single subject has claimed so much of the attention of the annual Assemblies, and to no other has such thorough study been given by broadly representative technical commissions forming part of the general organization of the League. Never before, indeed, have the nations of the world approached the problem of national armaments in the spirit of scientific inquiry — as a problem to be solved only on the basis of the most exhaustive study of all the factors involved.

The intimate relation between armaments and peace is stated in the first paragraph of Article VIII of the Covenant, which runs as follows:

> The members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

This provision, it will be observed, falls far short of envisaging complete disarmament. It assumes that no program of arms limitation can ignore the requirements of national security; it also recognizes the need of available armaments, national or international, to be used as an international police force against what are later referred to in the Covenant as covenant-breaking states, or states which are faithless to their international obligations under the Covenant.

Article VIII then goes on to outline the general procedure whereby the League shall undertake to deal with the armaments problem. It is made the duty of the Council, " taking account of the geographical situation and circumstances of each state," to formulate plans for the reduction of armaments. These plans shall be for the consideration and action of the several governments, and once adopted, the limits therein fixed cannot be exceeded without the concurrence of the Council — acting, of course, under the rule of voting unanimity. They may, however, be reconsidered and revised at least every ten years. And further, the members of the League " undertake to interchange full and frank information as to the scale of their armaments, their military, naval, and air programs, and the condition of such of their industries as are adaptable to warlike purposes."

Practical Aspects of Covenant Procedure

These provisions have several important implications. Under them each state would know the precise amount and character of the armaments of every other state; and thus, assuming good faith on the part of all member states, the fear and apprehension occasioned by doubt as to the warlike preparations of potential enemy states would be eliminated. Secret military preparations would constitute a violation of the Covenant, and thus warrant League action as against a covenant-breaking nation. And again, there would be an end of, or at least a pause in, the armaments race which for many years has been both a financial burden to the military and naval powers, and a grave obstacle to peace.

Finally, by Article IX of the Covenant, provision is made for a Permanent Commission to advise the Council on the execution of the provisions of the foregoing Article, and those of Article I.[8] It is clear that the foregoing provisions endow the League with no authority to control the armaments policy of members without their consent. States are entirely free to accept or to reject the plans proposed by the Council; rejection carries no penalty, while acceptance is binding only for a period of ten years — and not even so long if the Council agrees to modifications. Moral coercion there might be if it should turn out, as well it might, that a single important member state stood in the way of the general adoption of a program of reduction, but such a state would be within its legal rights in refusing acceptance.

The delicacy of the problem of reducing armaments is thus made apparent. To be effective — indeed, to secure adoption at all — any plan presented by the Council must be accepted by all the states of military importance both within and outside the League. To say nothing of the difficulty of working out a plan that would meet the technical objections of the many states concerned — a matter briefly outlined later — it is obvious that interstate politics will enter into the situation. A group of states might readily agree among themselves to a plan proposed, but each be unwilling to accept it as regards a state or states outside the group. To secure universal agreement, or anything approaching it, on a subject so many-sided and so vital as national armaments, is indeed a formidable undertaking, even granted the whole-hearted acceptance of the principle involved by the states chiefly concerned.

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[8] Which stipulates, among other things, that any self-governing political unit not named in the Annex to the Covenant shall, as a condition of admission to the League, " accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments."

League Machinery to Deal with the Problem

The Permanent Advisory Commission provided for by the Covenant was promptly set up. It is composed of technical delegations from each of the countries represented on the Council, each member having its military, naval, and air services represented.[9] But lest the tendency of such a body, made up of military and naval experts, might be to take too technical and professional a view of the undertaking in hand, the Council created another body, known as the Temporary Mixed Commission, made up of six persons of recognized competency in political, social, and economic matters, and also of representatives of the Permanent Advisory Commission, the Economic and Financial Committees of the League, and the Governing Body of the International Labor Office. The Council subsequently added other specialists. This Commission continued in existence until the Assembly of 1924, being succeeded by a large commission known as the Coördination Commission.

These commissions have coöperated in prosecuting the activities of the League relative to armaments under the general direction of the Assembly and Council. Their procedure has been that generally followed by the technical organizations of the League. First of all, they have undertaken to lay the foundations of intelligent action by a thorough study of all available information with respect to armaments. This information embraces a wide variety of data relative to armaments, methods of warfare, and the like. It is published in what is called an *Armaments Year Book,* which contains detailed information concerning the armies, navies, air forces, industries capable of being utilized for war purposes, military budgets, etc., of the several states.[10]

These technical commissions have been aided in the gathering of data and the general work of preparation by a special section of the League Secretariat. Some of the great committees of the League have explored certain aspects of the general problem of war. Thus the Advisory Committee on Communications, aided by the Economic Committee, has conducted an inquiry into League communications by rail, air, wire, and wireless, with a view to their improvement in times of emergency; and the Financial Committee has formulated proposals concerning financial assistance for states attacked.[11] The result of this intensive study is that a thorough understanding has been gained of all the factors that must be taken into account in reaching general agreement on the subject of armaments. Thus a foundation for constructive work has been laid.

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[9] It is divided into three subcommissions dealing respectively with military, naval, and air questions.

[10] The *Armaments Year Book* for 1929–1930, is a volume of more than eleven hundred pages, containing the data referred to above for sixty-one countries, members and non-members of the League.

Technical and Practical Difficulties Involved

In judging the accomplishments of the League to date, as outlined in the following pages, it should be steadily borne in mind that the problem in hand is inconceivably complex and difficult. The further the inquiry has progressed the more clearly it appears that the armaments question cannot be treated as an isolated international problem, but that, on the contrary, it is bound up with the problem of security, and that both disarmament and security involve the general acceptance of alternative means of settling international disputes — judicial determination, conciliation, and compulsory arbitration.

On the basis of preliminary work done by the two Advisory Commissions, the Second Assembly (1921) outlined a program of investigation designed to lay the foundation for constructive work. It included an inquiry into the armaments and the military and naval budgets of various countries, and a request that they advise as to what military forces they considered indispensable for the preservation of domestic order. Meanwhile the technical difficulties of the problem were brought out by a plan presented by Lord Esher for the assignment of forces to the several powers on the basis of a fixed ratio, so many men constituting the unit of apportionment. It readily appeared that armaments could not be reduced to a common denominator in this simple fashion. Numberless other factors entered in, such as length of service as bearing upon military efficiency, the resources of the industry, and the man power of the various countries, geographical situation, and other highly important considerations. The problem was found to be quite unlike that solved by the Washington Naval Conference, which dealt with a single class of ships.[12]

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[11] The latter question was discussed at length by the League Disarmament Committee at the Tenth Assembly, 1929. See *Monthly Summary* for April, 1929, 71–73, for the consideration of this question by the Council.

[12] See *post,* Sub. VI.

Armaments and Security Linked Together

The investigations of the Temporary Mixed Commission led it to the general conclusion that, while governments sincerely desired to reduce national armaments, and the cost of maintaining them, to a minimum, the greatest difficulties stood in the way — difficulties broadly of a political rather than a technical nature. Especially was the Commission impressed by the subtle factor of the potential military forces which, in time of war, each nation possesses in varying degree, apart from its normal peace-time military organization. But perhaps the most fundamental aspect of the problem, recognition of which has since dominated the whole movement, is that security and the reduction of armaments are inseparably linked together, and that progress towards disarmament depends upon the development of some system of international guarantees against aggression. States will not reduce their military and naval forces unless and until they can rely upon compensating assurances of safety.

Obviously such guarantees can be afforded only by international agreement. This view was urged upon the Commission by Lord Robert Cecil of Great Britain, and was incorporated in its report to the Council and Assembly.[13] But should the guarantees be based upon a preëstablished plan of defense embodied in a general treaty — a universal treaty of guarantee? Or, taking into consideration the possible need of immediate defense against a swift aggressor, and the vagueness and consequent weakness of a general undertaking, would the end sought — security against sudden aggression — be better attained by special treaties affecting limited groups of states? The latter alternative is of special interest because it foreshadowed the Locarno treaties. Mutual assistance was to be guaranteed, whether under one general treaty, or by means of special treaties, only in consideration of a definite undertaking to reduce armaments.

The general problem was outlined in the famous Resolution XIV of the Third Assembly, which embodied in the main views already laid before the Temporary Mixed Commission by Lord Robert Cecil. The basic principles set forth were: (1) No scheme for the reduction of armaments, within the meaning of Article VIII of the Covenant, can be fully successful unless it is general. (2) In the present state of the world many governments would be unable to accept the responsibility for a serious reduction of armaments unless they received in exchange a satisfactory guarantee of the safety of their country.

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[13] For the text of this notable report see *Int. Con.*, No. 188 (July, 1923).

(3) Such a guarantee can be found in a defensive agreement which should be open to all countries; but in cases where for historical, geographical, or other reasons a country is in special danger of attack, detailed arrangements should be made for its defense. (4) As a general reduction of armaments is the object of the foregoing propositions, and a treaty of mutual guarantee the means of attaining that object, previous consent to this reduction, which may be attained by general or special treaties, is therefore the first condition of the treaty.

Informational Work of the League

Recognizing the need of full information as the basis for further discussion, the League organizations conducted a statistical inquiry, the results of which the Secretariat published in two volumes, in 1923. This inquiry was directed to peace time armaments, and expenditures thereon; but the Assembly had learned the lesson from the World War that actual military establishments were by no means the measure of total military strength, an important element therein being potential military strength, both in man-power and in industrial and economic resources. Accordingly the Assembly requested the League Secretariat to publish a military year book, in which special emphasis should be placed upon industrial and economic strength capable of being used for war purposes. Meanwhile the Washington Naval Conference had resulted in an agreement between the United States, Great Britain, France, Italy, and Japan which limited for a period of years their tonnage in capital ships and aircraft carriers.[14] Following this conference proposals were made to the League Commissions for an extension of the principles of the Washington Conference to non-signatory powers. This, however, was deemed impracticable; but to afford an opportunity for further study of the question, the naval sub-commission of the Permanent Advisory Commission was enlarged, and a meeting held in Rome in February, 1924. This conference found it impossible to reconcile differences of view as to the general application of the principles of the Washington treaty.

IV. DRAFT TREATY OF MUTUAL ASSISTANCE

As already pointed out, the Third Assembly, in its Resolution XIV, recognized that the crux of the armaments problem lay in the substitution for the security afforded, or thought to be afforded, by national armaments, of a like measure of security under some form of international guarantee. To this aspect of the problem the Fourth and Fifth Assemblies gave exhaustive consideration, the former in discussing the so-called Draft Treaty of Mutual Assistance, and the latter in drafting and debating the famous Geneva Protocol. The significance of these great documents and their lasting influence upon international sentiment in general and the armaments problem in particular can hardly be overemphasized.

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[14] On this Conference see *post,* Sub. VI.

The Draft Treaty was submitted by the Temporary Mixed Commission.[15] Its fundamental purpose was to guarantee to every nation reducing its armaments upon the faith of such guarantee assistance against any aggressor nation in the event of conflict. Thus security and disarmament were associated as interdependent and complementary principles. Its first article proclaimed a principle never before recognized by the customary or statute law of nations: " The High Contracting Parties solemnly declare that aggressive war is an international crime and severally undertake that no one of them will be guilty of its commission." Dr. Beneš, of Czechoslovakia, in reporting the Draft Treaty to the Fourth Assembly (1923), summed up the theories on which it proceeded as follows:

1. The Treaty would establish a general guarantee against aggression, and specifically define the obligations imposed upon the members of the League for its maintenance.
2. In the case of certain countries the general guarantee might be supplemented by special treaties adding validity and strength to the general guarantee, and thus combining the two views referred to above as to the best means of establishing an effective guarantee.
3. Each state would undertake to estimate the reduction in armaments which it could effect, in view of the operation of the single or double guarantee afforded by treaty.
4. On the basis of these estimates it would become the duty of the Council to draw up a plan of reduction, under Article VIII of the Covenant, which the several states, on acceptance, undertake and agree to put into effect within a period stipulated in the Treaty. Thereupon the guarantee against aggression contemplated by the Treaty would come into effect.

The special treaties of guarantee were an interesting feature of this plan. They contemplated agreements between two or a larger number of states, complementary to the general treaty, for their mutual defense. These special undertakings were to be examined by the Council with a view to affording assurance that they were in accordance with the principles of the general treaty and of the Covenant, thus guarding against the possibility of creating incongruous lesser leagues within the League itself.

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[15] For text see *Int. Con.*, No. 201 (August, 1924).

Provisions of the Draft Treaty

In brief, the Draft Treaty provided that the Council might take coercive measures in case of a threat of war — the application of economic sanctions or even military or naval force, under Article XVI of the Covenant. This involved a determination by the Council as to which of the parties to a dispute was the victim of aggression and so entitled to the assistance contemplated by the Treaty. This provision turned out to be one of the objectionable features of the scheme. It was conceded that there is no inclusive definition, no military standard, of aggression. Suggestion was made that the Council might, when its intervention was invoked, fix a neutral zone, crossing which would constitute an act of aggression; or propose an armistice and invite the parties to submit their dispute to the Council or to resort to some other pacific means of settlement, with an intimation that the party which refused would be considered the aggressor.

Such, in substance, was the Draft Treaty of Mutual Assistance. It was intended to pave the way for a reduction of armaments by extending to states partially disarming the security of a general agreement to assist them if attacked; and this agreement supplemented the Covenant of the League by strengthening the authority of the Council, and the binding obligations of the member states to deal with cases of military aggression. Whereas the Covenant, as it has been interpreted, leaves each member to determine for itself, in an emergency, the contribution it will make to measures of coercion against a covenant-breaking state, the Draft Treaty imposed a binding obligation upon the contracting states to respond to a summons from the Council to coöperate against an aggressor state. But no state could be so summoned to take part in operations in a continent other than that in which it was situated; so that European forces could not be called upon to serve in Asia, or American forces in Europe.

Rejection of the Draft Treaty — The American Plan

A number of states favored the Treaty in principle, but others, conspicuously Great Britain, opposed it so vigorously that it had to be abandoned. There was considerable feeling that the momentous decision as to which of two disputing states was to be deemed the aggressor could not safely be left to a political body like the Council; and that, even if it were, the unanimity rule of the Council would seriously handicap it in reaching decisions on aggression. Moreover, the special treaties sanctioned by the Draft Treaty were thought by some governments to savor too strongly of the vicious alliance principle, and to open the door to possible conflicts between the Council and particular groups bound by such special agreements, in certain contingencies. It was also urged against the Treaty that it laid too little stress upon its fundamental purpose — that of reducing armaments; and finally, that it emphasized too strongly the principle of force as a guarantee, and too little the legal and moral resources of the Covenant.[16]

It was difficult to reconcile the divergent views of those who stressed the efficacy of arbitration as a guarantee of security, and those who insisted that arbitration without drastic sanctions would be futile. A group of American publicists [17] formulated a plan embodying modifications in the Draft Treaty, in an effort to eliminate some of its objectionable features and thus render it more acceptable from these antagonistic points of view. They proposed that the World Court, instead of the Council as under the Draft Treaty, should decide upon the fact of aggression, and that any state refusing to submit the question to the Court should be automatically deemed an aggressor. Further, the sanctions which were compulsory under the Draft Treaty were made optional under the American plan, each state being free to " consult its own interests and obligations " in the matter of a boycott or measures of force against an aggressor.[18] It is apparent that these proposals at once strengthened and weakened the Draft Treaty — strengthened it by taking the determination of the fact of aggression out of the hands of a political body — the Council — and vesting it in a more independent and certainly less political body — the World Court; and weakened it by leaving the application of sanctions to the volition of each member state. They did not meet the fundamental objections urged against the Treaty.

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[16] On the Draft Treaty see Bruce Williams, *State Security and the League of Nations* (1927), Ch. V.

[17] Including Professor James T. Shotwell, General Tasker H. Bliss, and David Hunter Miller.

[18] For the text of this Plan and commentary by Professor Shotwell, see *Int. Con.,* No. 201 (August, 1924).

V. THE GENEVA PROTOCOL

The Assembly of 1924, the Fifth, made a renewed attack upon the problem which the Draft Treaty had failed to solve. The discussions of the Treaty had developed pronounced sentiment among influential members of the League in favor of arbitration[19] as a necessary factor in the formula "security and reduction of armaments." But would arbitration be effective without adequate sanctions? And what better sanctions could be devised than those with which the Council was armed under the Draft Treaty? Two points of view developed: One that security, and therefore disarmament, could best be assured by stressing the pacific nature of the League and building up its moral and legal guarantees; the other, that such guarantees can be made adequate only by arming them with force. The former was voiced in the Assembly by Mr. Ramsay MacDonald, speaking for Great Britain; the latter by M. Herriot, head of the French delegation, who summed it up with the phrase: "But justice must not be divorced from might."

The Geneva Protocol, which absorbed the attention of the Fifth Assembly, undertook to reconcile these two points of view, by treating arbitration as the complement of security and disarmament, just as in framing the Draft Treaty, security had been considered the complement of disarmament.[20] This remarkable Protocol, despite its failure to gain general acceptance, must be deemed an epoch-making document. In connection with the Covenant of the League, which it was intended to supplement and strengthen, it represents the most ambitious scheme ever devised to outlaw war by international agreement. Not only is it historically important, but it illustrates graphically the baffling elements of the problem of bringing international war under legal control. Space forbids detailed discussion of it; a brief analysis will serve to bring out its basic principles.

Principles of the Protocol

First of all, it pledged each signatory state to renounce war against every other state which accepted the obligations imposed by the Protocol, in favor of some form of pacific settlement.[21] As to cases falling within the jurisdiction of the Permanent Court of International Justice, this would mean compulsory resort to that Court, if one of the parties to the dispute so requested. Failing resort to the Permanent Court, or arbitral settlement by agreement between the parties, the principle of compulsory arbitration was to be inexorably applied, so as to close the " circle of protection drawn by the Covenant around the peace of the world." At the request of any party to a dispute a Committee of Arbitration would be constituted, either by agreement of the parties or by decision of the Council. If no party requested arbitration, it would be for the Council to examine the dispute and endeavor to reach a unanimous decision on it. Failing in this, it was made the duty of the Council to arrange for a competent and impartial Committee of Arbitration, whose decision would be final and binding.

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[19] That is, arbitration in the broader sense already discussed.

[20] For text of the Protocol with an official analysis of its provisions, see *Int. Con.*, No. 205 (December, 1924).

[21] Thus it was prophetic of the Kellogg Anti-War Pact. See Ch. XXXII, Sub. IV. Like the Kellogg Pact the Protocol recognized the right of resistance

Thus, the final solution of a dispute would inevitably take the form, either of a decision of the Permanent Court of International Justice, or of a unanimous decision of the Council, or of an arbitral award. But what if a state refused to submit to the procedure described above, or having acquiesced in it, refused to abide by the result? And how should the Council determine which of two countries was resorting to force aggressively, and which was exercising the legitimate right of self-defense? This delicate matter of determining when a state should be deemed an aggressor and therefore liable to the enforcement of sanctions, was finally decided on the basis of certain presumptions of aggression, which would hold good until a unanimous decision to the contrary had been reached by the Council.

The Fact of Aggression How Established?

More specifically, the presumption of aggression would arise in three cases — that is, when a resort to war was accompanied: (1) By a refusal to accept the procedure of pacific settlement, or to submit to a decision resulting therefrom; (2) by a violation of any provisional measure, such as an armistice, enjoined by the Council while it is investigating a dispute with a view to determining which state is the aggressor, the signatory states having agreed to take no action likely to extend the dispute or render it more acute while the Council is inquiring into it; (3) by disregarding a decision of the Council or the Assembly that the dispute arises out of a matter which lies ex-

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to aggression; it also permitted the use of force to uphold the provisions of the Covenant or Protocol.

clusively within the domestic jurisdiction of the other party and by failure or refusal to submit the question first to the Council or the Assembly.

The fact of aggression having been thus established, the Council was required to call upon the guarantor states to fulfill their duty by loyally and effectively coöperating in resisting the act of aggression, regard being had to the geographical position and resources of each state. How did this plan of collective resistance to aggression differ from that embodied in the Covenant? Dr. Beneš explained this point as follows: Under the Covenant, failing arbitration or judicial settlement of the dispute, the Council undertakes to adjust it by conciliation or mediation. If unsuccessful in this the Council, if unanimous, expresses an opinion as to which party is guilty, and may, by unanimous decision, recommend sanctions. But it is for the members of the League to decide for themselves whether this opinion is justified, and so as to their duty to apply economic or military sanctions. Moreover, if the Council cannot reach a decision by unanimous consent, its action becomes nugatory, and each party is left practically free to act as it chooses.

Sanctions Under the Protocol

Under the Protocol, in cases where other measures failed and war was resorted to, the Council would decide, unanimously or on the basis of certain presumptions arising from the acts of the parties, which party was the aggressor; and this decision would imply that such sanctions as the case required — economic, financial, military, naval, or air — should be applied forthwith, and without further recommendations or decisions. True, under the Protocol, when it came to the application of sanctions, each state was to judge as to how it should carry out its obligations, but not as to the existence of those obligations; in other words, each state could judge of what it would do, but not of what it should do.

By this stiffening of the obligation of states, even though there were no sanctions provided against such as failed to coöperate loyally and effectively in resisting aggression, Dr. Beneš held that the great omission in the Covenant had been made good. No longer could a state justify inaction on the plea that the Council's recommendations need not be followed, nor take advantage of the failure of the Council to obtain unanimity in dealing with the dispute. The provision as to sanctions was further strengthened by empowering the Council to receive undertakings from states determining in advance the military, naval, and air forces which they would be able to bring into action immediately in order to insure the fulfilment of the obligations arising out of the Covenant and the Protocol.

The Protocol and Limitation of Armaments

The Protocol was linked up to the question of armaments by a provision whereby the signatories agreed to participate in an international conference for the reduction of armaments to be held in June, 1925, to which all states, whether members of the League or not, were to be invited; it would lapse if this conference failed to adopt a scheme for reduction of armaments, as well as in the event of the non-execution of any scheme adopted by the conference. The Protocol was not intended to stand as an independent commitment outside the Covenant; the signatory states were to undertake to secure amendments to the Covenant embodying its essential provisions.

The principles embodied in the Protocol have been summarized as follows:

> Compulsory arbitration for every kind of dispute; aggression defined in such a way as to give no cause for hesitation when the Council has to take a decision; the indissoluble binding up of the whole system with a conference for the reduction of armaments; no arbitration or security without disarmament, and no disarmament without arbitration and security.[22]

To the Council was entrusted the work of preparation for the forthcoming arms conference; but the preliminaries were halted by the development of opposition to the Protocol, chiefly on the part of Great Britain. This opposition was urged on several grounds, among them (1) that universal compulsory arbitration as embodied in the Protocol might greatly increase the responsibilities already undertaken by members of the League; (2) that the absence of the United States from the League would complicate and might render ineffectual any attempt to apply economic sanctions; (3) that the provisions of the Protocol concerning sanctions

> insensibly suggested the idea that the vital business of the League was not so much to promote friendly coöperation and reasoned harmony in the management of international affairs, as to preserve peace by organizing war, and possibly war on the largest scale;

and (4) that there seemed to be no necessary connection between the application of the Protocol and disarmament.

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[22] *League Handbook, The Reduction of Armaments and the Organization of Peace* (Rev. Ed., 1928), 56.

The British government then urged the advisability of supplementing the Covenant by special arrangements to meet special situations — arrangements purely defensive, framed in the spirit of the Covenant, and designed to function in harmony with and under the guidance of the League. This suggestion of special defensive agreements was favored by other governments, some of which, nevertheless, stoutly defended the Protocol. Under these circumstances the Council decided to await the action of the coming Assembly before proceeding with preparations for the conference.[23] This development sealed the fate of the Protocol. Disarmament can come only by general agreement; for any first-class military or naval power to stand outside any limitation plan is to foredoom it to failure. Looking back upon the struggle for the Protocol one may concede the soundness of the British position while regretting the exigencies which prompted it.[24]

Significance of the Protocol

As already suggested, the Geneva Protocol is historic as the first comprehensive attempt to "outlaw war." [25] Not only was aggressive war branded as criminal, but this proclamation was backed up by a morally if not legally inescapable obligation on the part of the signatory states to protect any state against aggression by any other state which, refusing to submit its quarrel to pacific means of settlement, resorted to war. The thoroughgoing character of this scheme may be better appreciated by comparing it with the plan for the outlawry of war championed by Senator Borah in the United States Senate shortly after the close of the war. This plan denounced aggressive war as "a public crime under the law of nations"; contemplated the punishment by each nation of its own war-fomentors, and proposed the creation of a complete code of international law to be enforced by an international court with compulsory jurisdiction over all distinctively international controversies, this court to be backed up, not by force but by the power of an enlightened international public opinion. Numerous classes of disputes, some of them highly provocative of war, were exempted from the jurisdiction of the court. No provision was made for the settlement of disputes not lending themselves to judicial treatment — disputes entirely outside the scope of any practicable code of international law. Moreover, to expect nations severally to punish those who resort to arms avowedly in their defense is to take a naïve view of the spirit of modern nationalism.[26]

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[23] For statement of the British position, by Mr. Austin Chamberlin, in the Council of the League of Nations, see *Int. Con.* for September, 1925, No. 212, p. 25 ff.; and for Mr. Ramsay MacDonald's reply see same number, 36 ff.

[24] On the Geneva Protocol see Williams, *op. cit.*, Ch. V; see also D. H. Miller, *The Geneva Protocol* (1925), which has documentary material in appendices; *W. P. F. P.*, Vol. VII, 155 ff. and 509 (discussion by President A. Lawrence Lowell and others); *Int. Con.*, No. 205 (December, 1924).

[25] This phrase is used in its popular sense. Its technical accuracy to express the idea intended by it may be open to question. See Ch. XIX on War in International Relations.

Despite its failure the Geneva Protocol has had a profound influence upon international thought. The debates to which it gave rise brought the problem of outlawing war within the range of political discussion; an ideal had become the subject of serious study by practical statesmen. The fact that the Protocol was signed by a considerable number of states, and approved in principle by others, afforded striking evidence of the progress of international thought on the vitally important problem of war. Moreover, it may ultimately pave the way for amendments to the Covenant of the League whereby the likelihood of war may be lessened by provision for more effective sanctions against aggression. Indeed, the Assembly discussions served to emphasize the fact that the League as now constituted is by no means a guarantee against war. Again, the exhaustive consideration given to the problem of formulating a method of determining the guilt of aggression was of permanent value. If international government is to make a clear distinction between aggressive and defensive war, condemning and resisting the former so that there will need be no resort to the latter, some procedure must be devised to apply practical tests of aggression in concrete cases.[27]

In line with the British contention that the Covenant should be strengthened by special arrangements between states or groups of states for purely defensive purposes, the Locarno Pact, or Treaty of Mutual Guarantee, was entered into by Germany, Belgium, France, Great Britain, and Italy; [28] and about the same time a number of bilateral treaties of guarantee and mutual security were negotiated, providing, among other things, for mutual aid in case of unprovoked attack.[29]

[26] For text of the Borah Senate resolution see *Int. Con.*, No. 242 (September, 1928), 61.

[27] This problem is presented by the Kellogg Pact, under which, as universally interpreted, aggressive war only is renounced.

[28] On the Locarno Pact see Ch. XXXII, Sub. III.

[29] For the texts of these treaties see the *Survey of Arbitration Conventions and Treaties of Mutual Security Deposited with the League of Nations* made by the Secretariat of the League of Nations.

Locarno Treaties — The Preparatory Commission

The Assembly of 1925 directed its attention to arbitration as the first of the basic aims of the Protocol — arbitration, security, and disarmament. The negotiations leading up to the Locarno agreements were then well under way; the agreements were signed at London on December 1, 1925, and deposited in the archives of the League two weeks later. These epoch-making agreements are referred to more at length in another connection. While they developed out of the proposal to admit, in the general scheme of the Draft Treaty, special agreements to promote security within limited areas, and out of the discussions of the Protocol, the failure of these schemes left them unrelated to any general plan of disarmament; nor did they, by their terms, recognize any obligation or disposition on the part of the signatories to limit their armaments on the strength of the security thereby afforded. The signatories did, however, express their conviction that these agreements would materially hasten the disarmament contemplated by Article VIII of the Covenant and undertook to coöperate to that end.

Hence the Assembly of 1925, abandoning any such general solution of the problem of disarmament as that embodied in the Protocol, outlined a program of more specialized work, including a study of the development of special arbitration and security agreements after the model of the Locarno Treaties, and the prosecution of the technical work in preparation for a disarmament conference. In December, 1925, the Council, acting under instructions from the Assembly, set up a Preparatory Commission for the disarmament conference, which has since had the work of preparation in hand. It consists of twenty-six members, including representatives of the states members of the Council, and of other states not members which by reason of their geographical situation are specially related to the problem of disarmament. Three non-members of the League are represented on the Commission — the United States, Turkey, and the Union of Socialist Soviet Republics. Its general program of work was outlined by the Council Committee on Disarmament, taking the form mainly of a comprehensive questionnaire dealing with the fundamental aspects of the disarmament problem. The work of the Preparatory Commission is still in progress; its subcommissions and expert committees have dealt with the many technical questions raised by the questionnaire. It has had several sessions.[30]

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[30] For an outline of proceedings of the sixth session of the Commission, in

The Arbitration and Security Committee

Meanwhile the League has been directing its attention to a study of the whole problem of the pacific settlement of international disputes, on the theory that the prohibition of wars of aggression could be brought about, not alone by a comprehensive scheme like the Protocol, but also by arbitration treaties between members of the League, questions arising thereunder to be referred to the Permanent Court of International Justice under Article XIV of the Covenant. In the course of this study a survey was made by the League Secretariat of all treaties of arbitration and conciliation, and of mutual security, deposited with the League of Nations.[31] The Council Commission on Disarmament, assisted by other League technical committees, undertook an inquiry into the question of security, including practical measures to increase the efficiency of the League in dealing with emergencies, and in taking preventive action under Article XI of the Covenant.

The Assembly of 1927 authorized the constitution of an Arbitration and Security Committee to find a solution of the problem indicated by its title within the framework of the League. This committee was set up by the Preparatory Commission at its fourth session in 1927, all states members of the League represented on the Preparatory Commission being also represented on the Arbitration and Security Committee. This excluded the United States, which took the position that in accordance with its historic policy the political problems of Europe were particularly the concern of Europe.

This committee, which is an organ of the Preparatory Commission, has done important work in studying the guarantees afforded by arbitration and security as a background for an international convention for the limitation of armaments. It has devoted itself to the consideration of questions relating to the promotion of international arbitration and security agreements, and to the establishment of means to be employed by the organs of the League to enable the member states to meet their obligations under the Covenant. More specifically, it has been chiefly concerned with the preparation of draft conventions providing for arbitration, conciliation, and judicial settlement, and with the consideration of plans to improve the com-

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April and May, 1929, at which the Soviet draft convention was presented and discussed, see *Monthly Summary* for May, 1929, 131 ff.

[31] Down to December 15, 1927. For further reference to this Survey see Ch. XXXII.

munications of the League in case of emergency, and to provide financial assistance to states involved in war or threatened with war.

The General Act — Model Anti-Aggression Treaties

Its efforts to increase security by strengthening pacific means of settlement have resulted in a series of draft conventions relating to judicial settlement, arbitration, and conciliation. These drafts were considered at the ninth session of the League Assembly (1928), and adopted, as amended, in the form of a draft General Act providing in separate chapters for conciliation, judicial settlement, and arbitration, and of three draft bilateral conventions, each providing for one or more of these forms of settlement. The Assembly earnestly commended these conventions to the attention of all states not already parties to agreements embodying these pacific procedures. Several states have already accepted the General Act, and, as stated in another connection, thirty-four treaties, all but one of them bilateral, providing for one or another of these three forms of pacific settlement, were registered with the League Secretariat during the year 1929.[32]

The committee has also elaborated a scheme for financial assistance to states threatened with aggression. It has taken the form of a draft convention, by the terms of which the contracting states, in the event of war or of an international dispute likely to lead to a rupture, undertake to guarantee loans to imperilled states needing them, such loans being authorized by the League Council on request.[33] As to better League communications in time of emergency, the committee has formulated a convention for the facilitation of air transport in furtherance of the work of the League, over the territory of the contracting states, and has taken steps to conclude an agreement with the Swiss government for the establishment of a wireless station at the seat of the League.

Further to strengthen the conventional safeguards of peace the committee prepared, and the Assembly of 1928 approved, three model treaties designed to afford states guarantees against aggression. One, a treaty of non-aggression and mutual assistance, embodies an undertaking by each of the parties not to attack or invade the territory of another, and in no case to resort to war against another except in self-defense or in situations properly arising under the League Covenant. The treaty pledges the parties to have recourse to the recognized methods of pacific settlement; stipulates that any party may appeal to the Council of the League if it considers that the non-aggression provisions of the treaty, or the provisions for pacific settlement, have been violated; and provides that as soon as the Council has ascertained that a violation has taken place it shall at once advise the parties to the treaty, and each of them in such case undertakes to give assistance forthwith to the state against which the act complained of has been directed.

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[32] For the text of these draft conventions see *Monthly Summary*, October, 1928, Annexes. See Ch. XXXII for further reference to them.

[33] This scheme is still pending. For details concerning it see *Monthly Summary* for April, 1929, pp. 71–73, and for May, 1930, pp. 87–88.

The second of these draft treaties is a collective treaty of non-aggression, and the third a bilateral treaty of non-aggression. Both provide that no party will invade another or resort to war against another, except in self-defense or under the Covenant of the League, and both pledge the parties to undertake to settle by pacific means "all questions whatsoever on which they may differ and which it has not been possible to settle by the normal methods of diplomacy."[34]

So much for the campaign for the reduction of armaments conducted by the League of Nations. In the meantime more specialized attacks upon the problem have been made in a series of conferences held by the leading naval Powers. These conferences — the Washington Conference of 1921–1922, the Geneva Three-Power Conference of 1927, and the Five-Power London Conference of 1930 — have undertaken to reach agreement with respect to the naval armaments of the nations represented therein, so as to limit or end their burdensome and dangerous naval competitions. In so far as they have been successful in attaining this end, they have furthered the League project by eliminating some of the points of friction that would otherwise embarrass the general armaments conference in prospect.

VI. The Washington Conference on the Limitation of Armaments

The Washington Arms Conference of 1921–1922, called by the United States, was attended by the five naval powers — United States, Great Britain, France, Japan, and Italy — and by certain other powers interested in Pacific and Far Eastern questions[35] —

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[34] The texts of these model treaties, with an introductory note referring to some of their features, may be found in *Monthly Summary* for October, 1928, 319 ff.

[35] The work of the Conference dealing with these questions — the Four-Power Treaty between the United States, Great Britain, France, and Japan regarding their insular Pacific possessions, and the treaties relating to China — was perhaps more important, in the long run, than that of naval limitation.

Belgium, China, the Netherlands, and Portugal. The agenda of the Conference included the limitation of armaments both on land and sea; but it developed that agreement upon any scheme of limiting land armaments was definitely out of the question, owing largely to the opposition of France, and that in a restricted area of naval armament alone lay hope of success. Thus the Conference avoided the hazard of accomplishing nothing in a fruitless attempt to accomplish too much.

In his address accepting the chairmanship of the Conference, Secretary of State Hughes made a definite proposal, on behalf of the United States, involving the reduction, by the five naval powers, of the number of their capital ships [36] to a fixed ratio; and this scheme was finally embodied in a treaty to which these Powers were parties. It contemplated the scrapping of certain capital ships — a total of seventy-nine either already built or projected [37] — and the modification of naval building programs so that by 1931 the number of capital ships will be fixed in the ratio of 5 each for the United States and Great Britain, 3 for Japan, and 1.67 each for France and Italy.[38] In other words, the United States and Great Britain will be on a basis of parity in capital ships, as will France and Italy, with Japan in an intermediate position. Besides this limitation of capital ships the naval powers agreed to limit the tonnage of aircraft carriers.

The treaty is to remain in force until the end of 1936; but it provides that if any party "shall become engaged in a war which, in its opinion, affects the naval defense of its national security," it may, on notice to the other Powers, suspend its obligations under the treaty (with two specified exceptions) for the period of the hostilities. So also, if none of the parties shall have given notice of its intention to terminate the treaty before December 31, 1936, it shall continue in force for two years from the time such notice shall be given.[39]

Such were the rather meager results of the Washington Conference in the field of armament limitation. Its failures were as significant as its successes. By confining its main effort to agreement upon a narrow class of armaments it accomplished definite if limited results; while its inability to do more was indicative of the obstacles confronting the general movement with which the League has thus far struggled unsuccessfully. Summing up the results of the Washington Conference, then: It agreed upon the limitation of capital ships and aircraft carriers for a term of years; it failed to prohibit or limit submarines, although a determined effort was made to do so, or to limit light cruisers and aircraft — all of which the powers are at liberty to multiply indefinitely. And finally, it left the problem of land armaments untouched.

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[36] A capital ship, in the case of ships to be built, is defined in the treaty as a war vessel, not an aircraft carrier, whose displacement exceeds 10,000 tons, or which carries a gun with a caliber exceeding eight inches.

[37] Of this total the United States sacrificed the largest number of war vessels — fifteen, as compared with seven for Japan and four for Great Britain.

[38] In number of capital ships this will mean fifteen each for the United States and Great Britain, nine for Japan, and five each for France and Italy.

[39] For the text of this treaty see *Int. Con.*, No. 172 (March, 1922). The proposals of the United States at this Conference and other data relating to the treaty may be found in *League of Nations* (World Peace Foundation), Vol. IV, 373 ff.

Critics of the Conference, and skeptics as to the whole arms limitation movement, are prone to belittle its accomplishments. But the fact remains that its naval treaty was the most important international agreement for the limitation of armaments ever signed up to that time.[40] The Conference attacked its problem with businesslike directness, and as already remarked, contented itself with a limited success rather than risk total failure.

VII. THE NAVAL CONFERENCES OF 1927 AND 1930

During the summer of 1927 the Three-Power Naval Conference, participated in by the United States, Great Britain, and Japan, was held at Geneva. Called by the United States, the invitation was extended to France and Italy as well, but these countries declined to participate officially, the French government sending an "information mission," and the Italian government an "observer." This Conference, while unrelated to the League, nevertheless dealt with questions which the League Disarmament Conference must ultimately confront. The three Powers failed to agree, but expressed the conviction that the differences encountered should not be deemed insuperable obstacles to a further limitation of armaments.[41]

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[40] Buell, *op. cit.*, 559. See on this Conference *Int. Con.*, No. 169 (1921); H. A. Gibbons, *Introduction to World Politics* (1922), Ch. XLIX; *Survey of American Foreign Relations* (Council on Foreign Relations, 1928), 526 ff.

[41] The chief bone of contention between the British and American governments was the cruiser class of ships. The latter contended for a general limitation of the tonnage of such vessels, each Power to be at liberty to build such number and type of vessel as it might choose within this limitation. Great Britain stood for a strict limitation of cruisers of the larger class, with a more liberal limitation on smaller cruisers, claiming that so only could the special needs of the Empire be adequately met.

The London Five-Power Naval Conference

The same three naval Powers, this time joined by France and Italy, returned to the problem of naval armaments at a conference held in London early in 1930. After protracted negotiations a treaty was signed by all the powers represented.[42] It follows the general lines of the Washington Naval Treaty, but modifies it in important particulars. In part its provisions apply to all five Powers; in part it is a treaty between the three leading naval Powers alone.

Its main provisions may be briefly summarized, and its significance in the campaign for limitation of armaments appraised. As to Great Britain, Japan, and the United States the treaty declares a naval holiday in the building of capital ships until 1936. This provision supercedes those of the Washington Treaty which permitted the replacement by these three powers of a total of twenty-six battleships, the number scrapped under that treaty, thus leaving Great Britain and the United States fifteen battleships each, and Japan nine. France and Italy, on the contrary, are specifically given the right to build the replacement tonnage (70,000 tons each) which they were entitled to lay down under the Washington Treaty, but have not constructed. The total tonnage of aircraft carriers remains as fixed by the Washington Treaty.[43]

The vexed question of cruisers as between the United States and Great Britain, which wrecked the Geneva Conference of 1927, was compromised by conceding to the United States eighteen large 10,000 ton cruisers, and to Great Britain fifteen. This preponderance of tonnage in large cruisers in favor of the United States was balanced by conceding to Great Britain an advantage in small (six-inch gun) cruisers.[44] In total cruiser tonnage Great Britain is stronger by 15,000 tons, but it is a technical question whether there will be any disparity in fighting strength in this class of ships, having regard to the greater caliber and range of the armaments on the larger cruisers; but in any event each Power has the option to duplicate exactly the cruiser fleet of the other, thus bringing them to absolute parity.[45] In the class of ships known as destroyers, as well as in submarines and aircraft, the two Powers are placed on an absolute parity.

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[42] For text see *Current History,* Vol. XXXII (June, 1930), 461 ff.

[43] For Great Britain and the United States 135,000 tons each, and for Japan 81,000 tons.

[44] Great Britain may have 192,200 tons of such cruisers and the United States 143,500 tons.

[45] Japan is allowed a total cruiser tonnage of 208,850, as against 339,000 for Great Britain and 323,500 for the United States. The three Powers stand on a parity as regards submarines. In the matter of destroyers and aircraft,

The Safeguarding Clause — Use of Submarines

The treaty contains a so-called safeguarding clause, under which any one of the three leading naval Powers may, if it deems its national security to be materially affected by new naval construction on the part of any Power outside the group, increase its own tonnage on notice to the other two Powers specifying its proposed increases and the reasons therefor. In effect this means that if France or Italy, or both, should embark upon a policy of naval construction, Great Britain, Japan, or the United States could exceed its quotas of war craft on giving the prescribed notice.

This provision was incorporated into the treaty at the insistance of Great Britain, in view of the failure of France and Italy to subject their naval programs to treaty limitations comparable with those of the other three Powers. It may be argued that this flexible provision seriously weakens the treaty by placing its limitations upon the three leading naval Powers virtually at the mercy of French and Italian naval policy. It is at least doubtful, however, whether either of these states will be disposed to jeopardize the treaty, and the whole disarmament movement, by adopting a naval program sufficiently provocative to compel resort to this safeguarding clause.[46]

Like the Washington Treaty, the London agreement undertakes to humanize the use of submarines by stipulating that in attacking merchant ships they must conform to the rules of international law to which surface vessels are subject — that is, they must not sink or disable such ships without first placing passengers, crew, and ships' papers in a place of safety, exception being made in cases where the merchant ship, on being duly summoned, refuses to stop or actively resists visit and search. A similar provision was embodied in a treaty signed at the Washington Conference, but it failed of ratification.

The treaty expires by limitation at the end of the year 1936, except that the foregoing provisions relating to submarines remain

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Japan's quotas, as compared with those of Great Britain and the United States, are in the approximate ratio of 5 to 3.

[46] The Washington Treaty likewise undertook to safeguard the national security of the parties by authorizing a conference to be called by the state whose naval defense might be "materially affected by any change of circumstances," with a view to modifications of the provisions of the treaty by mutual agreement.

permanently in force; but Article XXIII provides that "unless the high contracting parties should agree otherwise by reason of a more generally known agreement limiting naval armaments to which they all become parties, they shall meet in conference in 1935 to frame a new treaty to replace and to carry out the provisions of this treaty." This clause contemplates the possibility that the larger armaments movement sponsored by the League of Nations may result in some comprehensive agreement before 1936.

General Estimate of the Conference

Measured by the hopes and expectations of its sponsors, the specific achievements of this Conference were on the whole disappointing. One of its objectives was a five-power treaty of naval limitation; in the main the treaty only restricts the building programs of the three leading naval Powers. Far from bringing France and Italy into agreement with these Powers, it disclosed that their naval policies were widely at variance. Italy demanded naval parity with France as the price of her adherence to a five-power limitation treaty, while France as stoutly insisted that the necessity of dividing her naval forces between the Atlantic and the Mediterranean, and of protecting her far-flung African possessions, justified her in refusing to concede parity to Italy — unless, indeed, limitations of her actual or potential naval strength, and her consequent loss of defensive power, could be made good to her by a guaranty against aggression, for which she looked to Great Britain. Such assurance Great Britain found it impossible to give.

The Conference did not entirely outlaw the submarine, nor did it deal with the question of freedom of the seas. Moreover, the treaty in the main is one of naval limitation rather than of naval reduction, although the total authorized tonnage of the three leading naval Powers, under the treaty, is substantially below their actual tonnage at the opening of the Conference.[47]

On the other hand, the economies effected by the scrapping of capital ships without replacements, and in reduced expenditures for certain other craft, are substantial for all three Powers. It should be noted, however, that the United States must expend a vast sum during the six-year period if the parity with Great Britain authorized by the treaty is to be achieved in fact — a sum estimated at over a billion dollars.

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[47] On this point see President Hoover's message of July 7, 1930 to the United States Senate, *Senate Doc. No. 213, Cong. Record 71st Congress, Special Session of the Senate, July 7–21, 1930,* p. 4. For summaries by President Hoover and Secretary of State Stimson of the results of this Conference see *Current History,* Vol. XXXII, 356–360 (May, 1930). The text of the Treaty is printed in *ibid.,* 461 ff., with articles on the views of the five nations concerned regarding the Treaty.

But in spite of these comparatively meager material results, and of the failure of the conference to attain its larger ends, it seems clear that the treaty marks a substantial advance in the campaign for limitation of armaments. At the Washington Conference Great Britain conceded parity with the United States in capital ships; under the London Treaty the principle is extended to all categories of war craft. It is obvious that this agreement upon a fundamental policy by the two leading naval Powers of the world will facilitate the more general agreement referred to in the Treaty. But even if such an agreement proves unattainable, it is a notable gain for world peace that three great naval states have put an end, as between them and for the time being, at any rate, to costly, irrational, and dangerous competition in naval strength.

And finally, all five states are bound to meet in conference again at the end of a five-year period to renew their negotiations, unless, in the meantime, they shall have joined in a more comprehensive armaments agreement.

Disarmament Under the Peace Treaties — Straits Convention

The limitation of armaments must, of course, proceed on the basis of voluntary agreement. The provisions of the Covenant of the League of Nations, as pointed out above, do not contemplate the exercise, by the League, of any authority to force limitations upon the member states. Only as a condition of peace imposed by the victors in war upon their defeated foe can disarmament be dictated. Such peace conditions are not unfamiliar in modern history, the latest examples being the virtual disarmament of Germany and her allies in the World War, under the Peace Treaties. Besides being forbidden to maintain any air forces or submarines, and more than a negligible naval force, the German army is limited to 100,000 men, Austria's to 30,000, Hungary's to 35,000 and Bulgaria's to 33,000.[48] These forces were considered ample for police duty, but they are insignificant as compared with the armed forces of the neighbors surrounding these countries. Incidentally these treaty provisions are a makeweight on the side of a general arms limitation, because the Treaties make it clear that the restrictions imposed upon the Central Powers were to be deemed the beginning of a general limitations program; so that the failure of the Allied Powers to promote such a program will really involve their good faith under the Treaties.

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[48] For an account of the difficulties encountered in holding these nations up to their treaty obligations, see Buell, *op cit.*, 564 ff.

Mention should be made, also, of the provisions of the so-called Straits Convention of 1923 between a group of the Great Powers, the Balkan States, and Turkey, relating to naval forces on the Black Sea.[49] This Convention stipulates that the maximum force which any one power may send through the Straits (the Dardanelles, the Sea of Marmora, and the Bosphorus) shall not be greater than that of the most powerful fleet of the Powers bordering on the Black Sea existing at the time of passage, the parties each reserving the right, however, to send into the Sea a maximum force of three ships, no one to exceed 10,000 tons. This Convention, the execution of which is under the supervision of an international commission responsible to the League of Nations, will tend to protect the Black Sea against being made the theatre of extensive naval operations in future wars.

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[49] For text of this Convention see 18 *A. J.* (1924), *Official Documents Supplement,* p. 53.

CHAPTER XXXII

POST-WAR DEVELOPMENT OF ARBITRATION AND CONCILIATION

In Part VI a rapid survey is made of the development of the international judicial function prior to the World War. The revival of the practice of international arbitration, inaugurated by the Jay Treaty between the United States and Great Britain in 1794, was traced down to its nineteenth century culmination in the establishment of the Hague Permanent Court of Arbitration by the First Hague Conference of 1899 — a plan revised and re-adopted by the Second Hague Conference of 1907. So also, the powerful influence upon international sentiment of the establishment of the Hague Court, evidenced by a numerous group of bilateral treaties of arbitration following 1899, was there explained. As a collateral development, definitely originating also at the First Hague Conference, there appeared during this same period the International Commission of Inquiry, in principle judicial but falling short of full judicial character.

This pre-war arbitration movement had marked a definite advance over earlier practice in the settlement of international disputes. The feasibility of pacific settlement for a wide range of questions had been demonstrated; there remained the further development of arbitral procedure and kindred methods of peaceful adjustment, and their more general adoption by international agreement. The Great War definitely halted the movement. During its progress, as has been pointed out, numerous schemes of world peace were worked out, all necessarily involving methods of settling international controversies without resort to war; but such methods were less stressed than the need of international organization. The larger problem seemed to be to establish some sort of collective authority competent to keep the peace; the particular method of settling international disputes was deemed less important than the organization of force to compel nations to resort to pacific means of some kind to settle their quarrels.[1]

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[1] In this connection reference should be made to an important series of

Arbitration Under the League Covenant

It was largely from this point of view that the Covenant of the League of Nations was framed. It does not prescribe compulsory arbitration for any class of cases whatever. Article XII binds members to submit their disputes either to arbitration or judicial settlement, or to inquiry by the Council. Article XIII is more specific, in that it undertakes to indicate what classes of cases are arbitrable or justiciable:

> Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement.

The parties may select their own tribunal — either the Permanent Court of International Justice or any tribunal set up for the particular dispute or agreed upon beforehand in a convention existing between them. As to the effect of the judicial decision or arbitral award, the Covenant contains two stipulations: First, that the members of the League shall carry out in good faith any award or judgment that may be rendered, and will not resort to war against a member which complies therewith; and second, that in no case will they resort to war until three months after the award or judicial decision has been made, the tribunal being given a reasonable time within which to dispose of the case. This provision apparently contemplates a situation in which both parties, in violation of their

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arbitral tribunals provided for in the Peace Treaties. Under Section VI of Part X of the Versailles Treaty — and the corresponding clauses of the other Peace Treaties — provision was made for one arbitral tribunal between each of the Allied and Associated Powers, on the one hand, and Germany (and each of the other late enemy powers) on the other. These so-called mixed arbitral tribunals were established to decide questions arising under certain other sections of the treaties, relating to debts, contracts, proprietary and property rights as between nationals of the Allied Powers and those of the enemy countries, or to proprietary rights claimed by the former in enemy countries. These tribunals, which have been doing valuable work in adjusting disputes growing out of the War, have been sitting, some in The Hague, others in London and Paris. Mention should also be made of the Dawes Arbitral Tribunal, set up under the London Agreement of 1924 for the interpretation of the Dawes Plan. For a somewhat technical article on "The Competence of the Mixed Arbitral Courts of the Treaty of Versailles" see 17 *A. J.*, 661, (1923). On the Dawes Arbitral Tribunal see 22 *A. J.*, 797 (1928).

pledge to accept the decision or award in good faith, elect to resort to war.

It has been argued, and with some force, that the Covenant does not advance the theory or practice of arbitration, but on the contrary fails to go even as far as some treaties had gone before the War. Disappointment has been expressed that the Covenant does not stress the principle of legality in international relations by prescribing compulsory arbitration for disputes clearly susceptible of that method of settlement — such, for example, as that class of cases described as " differences of a legal nature or relating to the interpretation of treaties " which was discussed at great length in connection with the plan of compulsory arbitration before the Second Hague Conference. It is urged that the covenant-makers should have embraced the opportunity to extend the domain of law in international relations by obliging member states to resort to judicial settlement in the cases mentioned above.

Several reasons may be suggested for the rather restrained treatment of arbitration in the Covenant. One is that the Conference might naturally have felt that with the establishment of the Permanent Court of International Justice, provided for by Article XIV, nations would voluntarily resort thereto for the settlement of disputes of a legal nature; another, that to embody in the Covenant the principle of compulsory arbitration, thus made somewhat less necessary, would be to stir up needless opposition to the League. But a still better reason is that, coupled with the provision for voluntary resort to arbitration or judicial settlement are others compelling reference to the Council of all disputes " likely to lead to a rupture " which are not submitted to arbitration or judicial decision. Thus the obligation to submit dangerous disputes to some process of pacific inquiry is inescapable.

I. Arbitration Since the World War

But in harmony with the spirit of the Covenant, although outside the framework of the League, arbitration has made rapid progress since the War; and equally marked — perhaps even more significant — has been the development of the kindred procedure known as conciliation.[2] A large number of treaties providing for the settlement of international disputes by one or the other of these pacific methods have been negotiated during the past decade; indeed, no like period of time ever saw a comparable development. The Legal Section of the Secretariat of the League of Nations has prepared, at the request of the Council, a systematic survey of all arbitration and conciliation treaties and treaties of mutual security deposited with the League of Nations under Article XVIII of the Covenant up to December 15, 1927. It may be taken as including practically if not quite all treaties dealing with the pacific settlement of international disputes in the period between the organization of the League and the date named.[3]

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[2] Referred to, and distinguished from arbitration, in Ch. XVI.

First of all, it appears from this survey that some seventeen arbitration treaties concluded before the War have been extended since 1920, by new agreements between the parties. This group includes the series negotiated immediately after the Second Hague Conference of 1907, under which disputes of a legal nature are to be submitted to arbitration except those affecting vital interests, independence or honor, or concerning the interests of third parties.[4] A comparison of the scope of these earlier treaties, with their flexible and more or less nullifying exceptions, with the broad provisions of a large number of later treaties, serves to indicate the growing confidence of nations in this means of settlement.

Progress of Compulsory Arbitration

A crucial test of the progress made by arbitral procedure, and of the real loyalty of nations to the principle, is to be found in their attitude towards compulsory arbitration. It appears from the League survey that sixty-seven treaties providing either for arbitration alone or for conciliation and arbitration, were registered with the Secretariat; and it is highly significant that of these, fourteen stipulate for arbitration of all disputes of every kind, without exceptions or reservations. Bearing in mind that the best the Hague Conference of 1907 could do, after exhaustive consideration of many categories of questions proposed for compulsory arbitration, was to register agreement on the abstract principle, and embody it in the relatively unimportant Porter Plan, it is evident that obligatory arbitration has made substantial progress in the two decades since intervening. Moreover, the total of sixty-seven treaties surveyed does not include the Statute of the Permanent Court of International

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[3] This comprehensive survey is made the basis of the analysis which follows. It should be borne in mind that it does not include any treaties negotiated since Dec. 15, 1927. It includes the texts of all the treaties analyzed, and interesting statistical data and analytical tables.

[4] To six of these treaties the United States is a party.

Justice, Article 36 of which confers compulsory jurisdiction over a designated class of disputes as between states which accept it — the so-called optional clause.[5] This clause has now been accepted by a considerable number of states.

Scope of Post-War Arbitration Treaties

The arbitration treaties under consideration may be further classified. Sixteen of them embrace all disputes, subject to certain reservations; three (not including the World Court Statute) cover disputes of a certain kind; while thirty-four cover disputes of a legal nature, with certain reservations, being patterned after the 1908 group of treaties.[6] The term " legal dispute " is taken to refer to disputes in which the parties " can plead a right and base their claim upon some rule of international law," as distinguished from disputes of a political nature which are more appropriate for conciliation procedure.[7] Some of these treaties adopt the description in Article XIII of the Covenant, quoted above, of disputes generally suitable for submission to arbitration or judicial settlement.

Reservations are found in the larger number of these treaties, more or less limiting their scope. The old formula — vital interests, independence, honor, and the interests of third parties — appears in many, still constituting the chief bugbear of negotiators. A smaller number reserve disputes existing prior to the treaty, those concerning territorial integrity or status, questions affecting internal legislation, and the like. A majority of the treaties designate the Permanent Court of International Justice as the tribunal to be resorted to, either exclusively or in case of failure to agree upon another tribunal, thus constituting a source of future litigation for that Court. Other treaties designate a tribunal like or similar to that provided for by the Hague Conventions of 1899 and 1907; while a few stipulate for a special tribunal.

It has appeared elsewhere that an important question in arbitral procedure relates to the *compromis*, or preliminary agreement defining the matters in dispute, designating the tribunal, regulating the procedure, etc. Practically all these treaties provide for such a special agreement, sometimes leaving the drafting of it to an independent authority; or (in case of treaties accepting the jurisdiction of the Permanent Court) allowing questions to be submitted to the tribunal on application of one of the parties. No disposition is apparent to weaken these treaties by leaving a loophole of escape in the failure of the parties to conclude the *compromis*. It is of interest to note that a majority of them stipulate that pending the arbitral procedure the parties shall abstain from all measures which might affect the execution of the judgment or award given by the tribunal. A similar provision, it will be recalled, is found in the Bryan Commission of Inquiry Treaties.[8] Under some of them the arbitral tribunal is allowed to order measures to conserve the rights of the parties.

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[5] Further on the optional clause see Ch. XXXIV, Sub. III.

[6] On these treaties see Ch. XVII.

[7] *League Survey*, 22.

II. Post-War Conciliation Treaties

In the post-war period the principle of conciliation has gained wide treaty recognition.[9] A number of the treaties discussed above combine arbitration and conciliation, while a dozen or more provide for conciliation alone. Under the latter treaties the parties are bound to refer to a Conciliation Commission, or Commissioner, all disputes not settled through diplomatic channels or submitted to arbitration or to the Permanent Court of International Justice. Conciliation, be it noted, does not necessarily result in a settlement of the dispute; like the findings of a Commission of Inquiry, but unlike the award of arbitrators, the proposals of a Conciliation Commission may be adopted or rejected, in whole or in part, by the parties.

Provisions for conciliation and arbitration in the same treaty take different forms. Sometimes conciliation is a compulsory or optional procedure preliminary to arbitration. Of course if conciliation is successful it ends the dispute, obviating recourse to arbitration. In a few other treaties all disputes are made subject to conciliation, but only disputes of a legal nature may pass to arbitration after an unsuccessful resort to conciliation. Again, a considerable number of treaties make conciliation and arbitration alternative procedures, the nature of the dispute determining whether it shall be submitted to arbitration or conciliation. Because of the fact that the parties are at liberty to reject the proposals of a Conciliation Commission, but are bound by the decision of arbitrators, they are not disposed to insert in conciliation treaties as many or as important reservations limiting their scope, as in treaties of arbitration. Out of a total of fifty-two treaties providing for conciliation, thirty-five contain no reservations whatever as regards that form of procedure.

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[8] For an interesting chart showing all the treaty obligations of the United States for the pacific settlement of international disputes in force on April 1, 1928, see monograph by Philip C. Jessup: "The United States and Treaties for the Avoidance of War," *Int. Con.*, No. 239 (April, 1928).

[9] It appears most conspicuously in the Covenant of the League of Nations, the conciliation provisions of which, and the measures taken by the League thereunder in certain cases, are discussed at some length in Ch. XXXIII.

Functions of the Conciliation Commission

The conciliation organ or tribunal may be either permanent or non-permanent, more frequently the former, being usually described as a " Permanent Conciliation Commission." Some treaties provide for a single commissioner, to be appointed in each particular case. The functions of the Conciliation Commission are two-fold: First, that of elucidating the questions in issue between the parties, expressed in the Locarno treaties in the following terms:

> The task of the Permanent Conciliation Commission shall be to elucidate questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise . . .

The conciliation treaty of 1924 between Sweden and Switzerland states the function more directly, as being " to further the settlement of disputes by an impartial and conscientious examination of the facts." Second, it is the duty of the Conciliation Commission to endeavor, so far as possible, to bring the parties to an agreement during the course of the proceedings; or failing this, on completion of the inquiry, to submit proposals of settlement to the parties. Sometimes this duty is made optional with the Commission, in other treaties compulsory; in the Santiago Treaty of 1923 between the American States it is not specifically mentioned.

Clearly to differentiate conciliation from arbitration it should be repeated that the parties are free to accept or reject the findings and proposals of the Conciliation Commission. This is a basic characteristic of conciliation, whether or not expressly stipulated; but to place it beyond question a number of the treaties so provide. For example, the conciliation treaty of 1923 between various American states, later considered, provides that the findings of the Commission will be considered as reports upon the disputes under consideration, but not as having the value or force of judicial decisions or arbitral awards.[10] Most of the treaties stipulate that the parties shall, within a period fixed therein or to be fixed by the Commission, give their decisions as to how far they approve the findings of the Commission and accept the settlement proposed. The treaties quite generally provide, also, that pending the conciliation procedure the parties shall abstain from measures which might prejudicially affect the acceptance of the proposals of the Commission. Besides the treaties discussed above providing for arbitration, or conciliation, or both, in one form or another, a number of bilateral treaties, some thirty or more, have been negotiated since the War. While primarily treaties of mutual guarantee, some of these treaties contain provisions for the settlement of all disputes arising between the parties and not settled by diplomacy, conciliation, or arbitration, the procedure to be laid down in a special convention.[11]

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[10] *Art. VI.*

Treaties for Pacific Settlement in 1928–1929

The growing disposition of nations to agree in advance to adopt peaceful measures for the settlement of their disputes, so strikingly evidenced by the numerous treaties covered by the League Survey, which brought the record down to December, 1927, was confirmed in 1928 by the registration of fifteen treaties providing for pacific settlement; while in 1929 the number of such treaties rose to the remarkable total of thirty-four, to which no less than twenty-five different countries were parties. Eleven of them provide for conciliation only, twelve for arbitration only, and eleven for conciliation on the one hand, or either arbitration or judicial settlement on the other.[12] On December 31, 1929, the number of treaties providing for pacific settlement registered with the League Secretariat — that is to say, practically speaking, the number concluded since the establishment of the League was 130.

This notable activity in the making of bilateral peace treaties during the year 1929 was materially quickened by the adoption of the multilateral Peace Pact of Paris, discussed below; to some extent, also, it was undoubtedly promoted by the consideration and approval, by the League Assembly of 1928, of four draft conventions which had been prepared by the Arbitration and Security Committee.[13] One of these conventions, termed a General Act, provides for conciliation, judicial settlement, and arbitration in successive chapters.

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[11] For texts of these treaties see the *League Survey* referred to above, 353 ff.

[12] To twenty of these treaties the United States was a party; they are referred to in Sub. V of this chapter. On these 1928 and 1929 treaties see *Monthly Summary* for February, 1930, 28 ff., where the 1929 treaties are classified and analyzed.

[13] On the constitution and work of this Committee see Ch. XXXI. The texts of these conventions may be found in *Monthly Summary* for October, 1928, Annexes I and II. On the General Act see editorial by Quincy Wright in 24 *A. J.*, 582 ff. (July, 1930).

As to all these procedures the Act covers disputes of every kind which it has been found impossible to settle by diplomacy; but in acceding to it the parties may reserve several categories of disputes, namely: Those arising out of facts prior to the accession either of the party making the reservation or of any other party with whom it may have a dispute; those involving " questions which by international law are solely within the domestic jurisdiction of states " ; and " disputes concerning particular cases or clearly specified subject-matters, such as territorial status, or disputes falling within clearly defined categories." The organ of conciliation is to be either a permanent or a special Conciliation Commission. Disputes of a legal nature go to the Permanent Court of International Justice unless the parties agree to resort to an arbitral tribunal, or to conciliation.

The other three draft conventions approved by the Assembly are bilateral, and include: (a) a convention embracing arbitration or judicial settlement, preceded by recourse to conciliation as a compulsory or optional measure; (b) a convention providing for judicial settlement, arbitration, or conciliation, and (c) a convention providing for conciliation alone. The Assembly invited all states, whether members of the League or not, whose existing agreements did not already achieve the same ends, to accept procedure for judicial settlement either by becoming parties to the General Act, or by entering into agreements along the lines of these model bilateral conventions.

III. THE LOCARNO TREATIES

In reviewing the recent progress of arbitration and conciliation, special reference should be made to the Locarno Treaties and the Kellogg Pact, or Pact of Paris, as constituting the high-water mark of this movement. The Locarno Treaties, taking their name from the Swiss city in which they were negotiated, are characterized in the League Survey as " the keystone and final development " of the several classes of treaties under consideration.[14] Seven in number, they embody as a group the principles of conciliation and arbitration, both as distinct methods of pacific procedure in appropriate cases, and as alternative methods, arbitration succeeding conciliation only in case the latter procedure fails. They also include two treaties of mutual guarantee pure and simple, one between France and Poland, the other between France and Czechoslovakia, whereby each guarantees the other against any failure on the part of Germany to fulfill the obligations assumed by her in the several treaties contemporaneously negotiated to which she is a party.

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[14] For text of the Pact of Locarno, and of the Locarno arbitration treaty between France and Germany, see Quigley, *From Versailles to Locarno,* Appendices VIII and IX. The Franco-German treaty may also be found in *Int. Con.,* No. 216 (January, 1926). The texts of all the Locarno Treaties are included in the *League Survey,* Ch. V.

Treaty of Mutual Guarantee

The first of this group of treaties is denominated a treaty of mutual guarantee, but it is more than that. The parties are Germany, France, Belgium, Great Britain, and Italy. Having renounced the resort to war against one another, except in self-defense and under certain treaty provisions, by Article II of the treaty, Germany on the one hand, and France and Belgium on the other, by Article III undertake " to settle by peaceful means and in the manner laid down herein all questions of every kind which may arise between them, and which it may not be possible to settle by the normal methods of diplomacy." The same Article goes on to specify the means to be resorted to when diplomacy fails, namely, judicial settlement for questions with regard to which the parties are in conflict as to their respective rights, and reference of all other questions to a conciliation commission. In the latter class of cases, if the proposals of the commission are not accepted by the two parties, the question goes to the Council of the League of Nations for action under Article XV of the Covenant. The fulfilment of these mutual obligations on the part of France, Belgium, and Germany is guaranteed by the other two parties to the treaty, Great Britain and Italy.

Here, then, we find what amounts practically to universal obligatory pacific settlement adopted by three of the leading nations of Europe, two of them traditional enemies, and guaranteed by two other leading Powers. The significance of this great Treaty does not fully appear from the bare statement of its arbitration and conciliation features. It not merely sets up substitutes for war as between lately unfriendly neighbors; it guarantees the inviolability of the frontiers fixed by the Versailles Treaty as between Germany and Belgium, and Germany and France. Thus Germany definitely relinquished her claim to Alsace and Lorraine, accepting freely and voluntarily a frontier forced upon her in the peace settlement, and eliminating, so far as it can be eliminated by treaty, the most dangerous single question, probably, in European politics.[15]

The Locarno group also includes four treaties of arbitration and conciliation, of like import, between Germany on the one hand, and Belgium, France, Poland, and Czechoslovakia respectively on the other. They cover all future disputes regarding the respective rights of the parties except such as may be otherwise provided for by treaty. They provide that before resort is made to arbitral or judicial procedure the dispute may, by agreement of the parties, be submitted to a Permanent Conciliation Commission with a view to amicable settlement, the duty of this Commission being to elucidate the questions in dispute, and endeavor to bring the parties to an agreement.[16]

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[15] It has become a trite saying that " Locarno ended the War."

IV. The Peace Pact of Paris

The great multilateral agreement known as the Kellogg Pact, or officially as the Pact of Paris, was signed at Paris on the 27th day of August, 1928, by the representatives of fifteen Powers. An invitation bearing the same date was forthwith sent out to some forty-eight states — practically all the states of the civilized world other than the signatories — to adhere to the treaty. Subsequent action by many governments gives assurance that this Pact will ultimately embody the avowed policy of at least a large majority of the nations of the world on the subject of war and pacific substitutes for war, the final ratification — that of Japan — necessary to bring it into force having been deposited at Washington on July 24, 1929.

The Pact is remarkable for its brevity. It consists of a preamble and three articles, of which the first and second embody its essential provisions. They should be set forth in full:

> Article 1. The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.
>
> Article 2. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

Wars not Covered by the Pact

Until the Pact has been put to the test of practical interpretation, its meaning and ultimate value must remain problematical. Two or three points regarding it are already clear: First, it does not " outlaw " all wars.[17] The diplomatic notes exchanged in the course of the negotiations concerning it, which must be taken as an official commentary on its meaning, place definite limitations upon its scope, in two important particulars. Wars of self-defense are not renounced; moreover, it is for each nation to judge of the measures necessary for its own defense. So also, wars prosecuted by the League of Nations against a covenant-breaking state, and wars undertaken pursuant to the guarantees of the Locarno Treaty, are not forbidden by the Pact, because such wars could not be deemed instruments of national policy, but rather police measures by way of collective action against treaty-violating disturbers of the international peace.

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[16] On the Locarno Treaties see Bruce Williams, *State Security and the League of Nations* (1927), Ch. VI.

Second, it appears from the report of the Foreign Affairs Committee of the United States Senate on the Treaty that wars over questions arising under the Monroe Doctrine are not considered as renounced by the treaty, the theory of the United States being that the Monroe Doctrine is " a part of its national security and defense," and that " under the right of self-defense allowed by the treaty must necessarily be included the right to maintain the Monroe Doctrine, which is a part of our system of national defense." [18] The other parties to the Pact will doubtless acquiesce in this view. One of the British diplomatic notes indicates that Great Britain takes a similar position with respect to wars in regions where she has a particular interest; [19] and obviously other nations may invoke this doctrine of regional interest, notably Japan. It is apparent, then, that the precise definition of " war as an instrument of national policy " must be sought outside the Pact itself. Striking and suggestive as this " renunciation " phrase is, it probably amounts to little more than the preceding declaration condemning " recourse to war for the solution of international controversies."

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[17] Indeed it may be contended that it does not in terms or effect outlaw war at all, strictly speaking, and that the only legal consequences of a party's going to war with another party is to terminate all obligations under the treaty. See address by Chandler P. Anderson on " The Scope and Character of Arbitration Treaties," before the American Society of International Law, *Proc.* for 1929, 110, at p. 113; also address on the Pact, its meaning and legal effect, by Prof. Roland S. Morris, with general discussion, *Ibid.,* 88 ff.; George W. Wickersham, " The Pact of Paris: A Gesture or a Pledge," 7 *Foreign Affairs,* 356 (April, 1929) ; R. L. Buell, *International Relations* (Rev. Ed., 1929), 657 ff.

[18] Quoted from the Senate Report.

[19] For text of this note see James T. Shotwell, *War as an Instrument of National Policy* (1929), Appendix V.

The Pact a Declaration of Policy

Third, the pacific means to which the parties undertake to resort for the settlement of all their disputes or conflicts are not defined. In this respect the Pact is a declaration of policy rather than a plan of action. The parties are left at liberty to adapt means to the nature of the controversy when it arises. In the light of experience this may be accounted a weakness, agreement upon the machinery of peaceful adjustment often being rendered difficult by the sharp disagreement between the parties which occasions the need thereof. This defect, if it be such, is of less moment, however, because of the increasing network of arbitration and conciliation treaties, discussed above, applicable to controversies between many of the parties to the treaty.

It is as a great declaration of principles and policy, rather than as the embodiment of a method of furthering peace, that the Kellogg Pact is notable. It does not " implement " peace, so to speak, as does the League Covenant; but it definitely places upon a nation resorting to war instead of to pacific means the burden of justifying its policy either as an exercise, in good faith, of the right of self-defense, or as the fulfilment of an international obligation to restore, or to preserve, international peace.[20]

Linking the Pact with the Covenant

At the Tenth (1929) Assembly of the League the British government proposed a series of changes in the Covenant intended to link up the Kellogg Pact with the League by closing certain gaps in the Covenant through which member states which are also signatories of the Pact may still proceed to war without a violation of its terms because of the tacit reservations attached to their acceptance of it, and by eliminating certain references to war.

The British proposals were supported by several other members,

[20] One of the best books on the Kellogg Pact is Shotwell, *op. cit.* David Hunter Miller's work, *The Peace Pact of Paris,* with Appendix of Documents, is also valuable. For the text of the Pact and diplomatic papers concerning it, see document issued by the United States Government Printing Office entitled " The General Pact for the Renunciation of War " (1928). The text may also be found in XXIX *Current History,* p. 3 (1928), with the text of the American invitation to other nations to adhere to the treaty, and in Shotwell, *op. cit.,* 301 ff. It is noteworthy that when trouble arose, in the summer of 1929, threatening war between Russia and China, Secretary of State Stimson, after conferring with the diplomatic representatives of the leading Powers at Washington, reminded the governments of China and Russia that as signatories of the Kellogg Pact they were under pledge to settle their dispute by means other than war.

among them France and Italy. The Assembly, not being prepared to deal with so important a matter without deliberation, appointed a committee of eleven members to consider not only the British proposals but observations and proposals from more than twenty other governments, their general purport being to amend the Covenant so as to bring it into harmony with the Paris Pact.

This committee has presented a report embodying proposed amendments of the preamble of the Covenant, and of Articles XII, XIII, and XV. In substance the proposed amendment of Article XII eliminates the reference, in the first paragraph, to the resort to war by members of the League. Under this paragraph as it now stands members agree that after submitting any dispute to arbitration, judicial settlement, or inquiry by the Council, they will in no case " resort to war until three months after the award of the arbitrators or the judicial decision, or the report of the Council." The paragraph as the committee proposes to amend it would bind members to employ only pacific means for the settlement of their disputes, following the phraseology of the Pact, in no case resorting to war for the solution of their disputes.

So the fourth paragraph of Article XIII, which now binds the members of the League to carry out any award or decision that may be rendered, and not to resort to war against a member which complies therewith, would if amended as proposed prohibit " any action " against a member which complies with the award or decision. Again, the sixth paragraph of Article XV, as the committee propose to amend it, would positively bind the members to comply with the recommendations of a unanimous report of the Council; this clause in the Article as it now stands providing that the members will not go to war against any party to the dispute which complies with the recommendations of the Council report, if unanimous.

Finally, the committee propose to add the following new paragraph to Article XV, referring to permissible action by the Council in its examination of the procedure best suited to meet a case before it:

> At any stage of the examination the Council may, either at the request of one of the parties or on its own initiative, ask the Permanent Court of International Justice for an advisory opinion on points of law relating to the dispute. Such application shall not require a unanimous vote by the Council.

These proposed amendments, or such of them as may be approved by the Assembly, will become effective when duly ratified under Article XXVI of the Covenant. It would be idle to speculate as to the probable attitude towards them of the more important members of the League. In so far as they are thought to render more stringent the obligations assumed under the Covenant, opposition may be anticipated. In any event their consideration in the Assembly and by the several governments will doubtless serve to throw some light upon the disposition of states accepting the Covenant and the Paris Pact to make them effective guarantees against war.[21]

V. Recent American Treaties

Inter-American Conciliation Treaty of 1923

During the post-war period conciliation has become firmly established in the New World, being embodied in three important treaties. Of these the conciliation treaty between the American states signed at Santiago, Chili, in 1923, may be referred to more particularly, not only because it illustrates some aspects of this type of treaty, but especially because it established an important principle of American public law. Its salient features are as follows:

1. It provides for submission to a Conciliation Commission of "all controversies which for any cause whatsoever may arise between two or more of the High Contracting Parties and which it has been impossible to settle through diplomatic channels, or to submit to arbitration in accordance with existing treaties"; also for such submission "in cases in which the circumstances of fact render all negotiation impossible and there is imminent danger of an armed conflict between the Parties."[22]

2. Any party directly interested in the investigation of the fact which is giving rise to the controversy may apply for the convocation of the Commission of Inquiry.[23]

3. The parties are forbidden to begin mobilization or concentration of troops on the frontier, and to engage in any hostile acts or preparations from the time steps are taken to convene the Commission until it has rendered its report and the parties have had six months' time

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[21] For a survey of the report of this committee, with the text of the proposed amendments, see *Monthly Summary* for March, 1930, 46 ff. The proposals may also be found in *Current History*, Vol. XXXII, p. 363 (May, 1930). The full text of the report is published by the League as *Doc. A. 8. 1930. V;* and the Official Minutes of the proceedings of the committee as *Doc. C. 160. M. 69. 130. V.*

[22] *Art. I* and *II.*

[23] *Art. II.*

thereafter for "renewed negotiations in order to bring about a settlement in view of the findings of the report."

4. Detailed provision is made for the organization of the Commission in each case, through the initial agency of either of two permanent Commissions established respectively at Washington, D. C., and Montevideo, Uruguay. Omitting provisions to meet certain contingencies that may arise in making up the Commission, it is to be composed of five members, all nationals of American states, each government to appoint two, only one of whom may be a national of its country, and the fifth, its President, to be chosen by those already appointed.

5. "As soon as the Commission of Inquiry is organized, it shall at the request of any of the parties to the dispute have the right to fix the status in which the parties must remain, in order that the situation may not be aggravated and matters may remain in *statu quo* pending the rendering of the report by the Commission." [24]

6. The report of the Commission must be rendered within a year; it is considered a report upon the dispute, not as a judicial decision or arbitral award.

This treaty does not require or authorize the Commission to make specific proposals of settlement. The assumption is that a full, impartial elucidation of the questions in dispute, with a maximum interval of eighteen months for deliberation by the governments and peoples concerned, will lay the foundation for a friendly adjustment. This treaty has been ratified by the United States and several other American states.[25]

Central American Commission of Inquiry Treaty

In line with this treaty is another negotiated the same year at the Central American Conference in Washington between the United States and the five Central American states. This treaty provides for a Commission of Inquiry to deal with any controversy "originating in some divergence or difference of opinion regarding questions of fact, relative to failure to comply with the provisions of any of the treaties or conventions existing between them and which affect neither the sovereign and independent existence of any of the signatory republics, nor their honor or vital interests." Thus, in scope it is narrower than the Bryan Commission of Inquiry Treaties, which cover all disputes without exception, and also narrower than the Santiago treaty discussed above. The Central American treaty also differs from the Pan-American in that the latter lays no duty upon the Commission, and recognizes no right on its part, to make any proposals or suggestions of settlement; while the former not only empowers the Commission to elucidate the facts but gives it the right " to recommend any solutions or adjustments which, in its opinion, may be pertinent, just and advisable." [26]

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[24] Appendix to treaty, Art. V.

[25] Its text may be found in the *League Survey, cited above,* 158 ff.; also in *U. S. Treaty Series, No. 752.*

It is obvious that the functions of Commissions of Inquiry pure and simple, like those under the Bryan Treaties, are quite analogous to those of Conciliation Commissions of the type discussed above. The Commission of Inquiry stops short of proposing an adjustment of the dispute investigated — unless, indeed, the parties agree that it may go that far; but it paves the way for settlement by its report on the facts. The two bodies are alike in that neither has the power to bind the parties by its findings or report.

Inter-American Conciliation Convention of 1929

Finally, the Inter-American conciliation treaty of Santiago, of 1923, referred to at some length above, was enlarged and strengthened by another Inter-American convention signed at Washington on January 5, 1929, by the plenipotentiaries of twenty American Republics, including the United States.[27] This convention accomplished its purpose chiefly by providing that the Permanent Commissions set up under the earlier treaty " shall be bound to exercise conciliatory functions " until the Commission of Inquiry shall be organized as provided by the treaty; and the latter in turn is to act as an organ of conciliation by endeavoring to effect a settlement between the parties. To that end it shall undertake a conscientious and impartial examination of the questions in controversy, and propose the bases of a settlement; but its report shall not have the effect of a decision or an arbitral award binding the parties, either in law or fact.

General Inter-American Arbitration Treaty

So also, a notable triumph for arbitration was scored at the same conference which framed the Pan-American Treaty of Conciliation above referred to. Reiterating the declaration made at the Sixth

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[26] The text of this treaty is in *U. S. Treaty Series, No. 717;* also in *Official Documents,* 17 *A. J.,* 108 (1923).

[27] *U. S. Treaty Series No. 780.*

Pan-American Conference at Havana, " that the American Republics condemn war as an instrument of national policy and adopt obligatory arbitration as the means for the settlement of their international differences of a juridical character," the Conference signed a General Treaty of Inter-American Arbitration. It binds the parties to submit to arbitration all international differences arising by virtue of a claim of right under treaty or otherwise; and the following questions are declared to be among those of juridical character:

(a) The interpretation of a treaty;
(b) Any question of international law;
(c) The existence of any fact which, if established, would constitute a breach of an international obligation;
(d) The nature and extent of the reparation to be made for the breach of an international obligation.[28]

Only two classes of controversies within the above categories are excepted from the operation of the treaty, namely: Those within the domestic jurisdiction of any of the parties to the dispute and not controlled by international law; and those which affect the interest or refer to the action of a state not a party to the treaty. The arbitral tribunal is to be agreed upon; but failing that, the treaty outlines a procedure to be followed in creating one.[29]

Bilateral Treaties Negotiated by the United States

During the years 1928 and 1929, the United States negotiated with non-American States a series of some twenty bilateral treaties of arbitration, substantially identical in their terms, each covering all differences relating to international matters arising by virtue of a claim of right not adjusted by diplomacy or as the result of reference to the Bryan Treaty of 1914 between the parties, if there be such a treaty between them and if not, as the result of submission to an appropriate commission of conciliation, the differences being justiciable in their nature because susceptible of decision by the application of the principles of law or equity. Such disputes are to be referred to the Hague Permanent Court of Arbitration, or some other competent tribunal, as may be agreed in each case. The second article of these treaties excepts from their provisions four classes of disputes, namely, those the subject matter of which (1) is within the domestic jurisdiction of either of the parties, (2) involves the interests of third parties, (3) depends upon or involves the Monroe Doctrine, or (4) depends upon or involves the obligations of the European party under the Covenant of the League of Nations.[30]

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[28] This list of juridical questions is taken from Article XIII of the Covenant of the League of Nations.

[29] A number of states signed the treaty with reservations. For text and reservations see *Official Documents*, 23 *A. J.*, 82 ff. For text of the conciliation treaty signed on the same date see *op. cit.*, 76 ff. On these two treaties see Charles Evans Hughes, *Pan-American Peace Plans* (1929).

To supplement these treaties, in cases where no Bryan Peace Treaty was in force between the parties, separate conciliation treaties were negotiated with a number of the same states. These treaties, substantially identical in terms, provide for reference to a Permanent International Commission of five members, of any disputes of whatever nature they may be, which the parties do not settle by diplomatic means, and which they do not refer to adjudication by a competent tribunal. The report of the Commission, which must be submitted within a year, does not bind the parties, each reserving " the right to act independently on the subject matter of the dispute." It is further stipulated that the parties shall not declare war or begin hostilities before the report is submitted. These treaties closely resemble the Bryan Treaties.

The keynote of these arbitration treaties is sounded in their preamble, wherein the parties declare themselves

> eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when the perfection of international arrangements for the pacific settlement of international disputes shall have eliminated forever the possibility of war among any of the powers of the world.

These bilateral treaties of arbitration and conciliation are closely related to the Kellogg Anti-War Pact, setting up machinery somewhat in advance of that already existing to enable the parties to make good their pledge in that multilateral treaty to resort to peaceful means for the settlement of their disputes.[31] They evidence recognition by the parties to the Pact of the fact that it is largely futile to renounce war without providing some alternative means of settling the disputes, inevitable in the intercourse of states, which have heretofore been deemed occasions for the resort to war.

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[30] One of these treaties is with France; it was intended as a model for the others. For text see *U. S. Treaty Series, No. 785;* also *Int. Con.,* No. 239 (April, 1928), p. 36, and Shotwell, *op. cit.,* Appendix III. See also editorials in 22 *A. J.,* 362, 368 (1928).

[31] This purpose was well stated by Charles Evans Hughes in his notable Presidential Address before the American Society of International Law, *Proc. 1929,* 6–7.

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CHAPTER XXXIII

THE LEAGUE COUNCIL AS CONCILIATOR

I. Conciliation Functions of the Council

The distinction between arbitration, in the strict sense of the term, and conciliation has already been pointed out.[1] Arbitration is essentially a judicial procedure, conciliation a method of non-judicial adjustment. It is technically correct to speak of a " court " of arbitration, for such tribunals reach their decisions on the basis of a determination of facts after hearing, and the application thereto of legal rules; only in a general and inexact sense can the term " court " or " tribunal " of conciliation be used. While these procedures are, strictly speaking, distinct in character, though identical in aim, they are not definitely divorced in practice. It has appeared that provisions for both, to be resorted to alternatively, or each in its appropriate class of cases, have been embodied in a number of recent treaties; also that conciliation may attain successful results by inducing the parties to resort to arbitration.

As has been stated, arbitration is not made compulsory by the Covenant of the League for any class of cases, the Covenant merely enumerating certain disputes " which are generally suitable for submission to arbitration or judicial settlement." Several reasons have been suggested why the framers of the Covenant dealt with arbitration so indecisively, the most weighty, perhaps, being that the Covenant provides for submission to the Council of all disputes likely to lead to a rupture which are not submitted to arbitration or judicial settlement, the obligation to resort to some means of peaceful settlement thus being made imperative. In the rôle thus prescribed for the Council it acts, not in a judicial capacity but primarily as conciliator — first in an endeavor to effect a settlement of the dispute by bringing the parties to an accord, and failing that, by reaching agreement on recommendations as to an adjustment deemed just and proper in regard to the dispute. It is this function of the Council —

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[1] In Ch. XVI.

the provisions of the Covenant relating to it, and the procedure followed in specific cases — which this chapter undertakes to discuss.

The Covenant lays a broad foundation for conciliatory action by the Council by declaring in Article XI:

> Any war or threat of war, whether immediately affecting any of the members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations.

And to encourage members of the League to invoke its good offices in disputes or situations inimical to pacific international relations, the Covenant declares it to be

> the friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

Council Procedure in Dealing with Disputes

Under Article XV of the Covenant, in case a dispute arises it is made the duty of the Secretary-General of the League, on request of any member, forthwith to summon a meeting of the Council, and to arrange for a full investigation and consideration of the dispute. The disputants are required to lay before the Council, as promptly as possible, statements of their case, with all relevant facts and papers. This documentary material may be published by the Council as a matter of general public interest and information. Having the full case before it, the Council must undertake to effect a settlement of the dispute. If successful, it shall publish such pertinent facts and explanations as it may deem appropriate. If unsuccessful, the Council shall make and publish " a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto." This report may be made either unanimously or by majority vote; but " any member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same."

The significance of these provisions for publicity is obvious. They arm the Council with the right of appeal to public opinion; and thus nations risk the moral condemnation of the world if they reject a just and proper basis of settlement proposed by the Council, even though by majority vote only. If the report of the Council is unanimous it is binding upon the parties, to the extent that it bars members of the League from going to war against any party to the dispute which complies with its recommendations.[2] War is not in terms proscribed as the result of Council action in two situations: First, when the Council fails to reach a unanimous report, in which event the Covenant vaguely provides that " the members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice "; and second, when neither party accepts and abides by the report.

The Council has no jurisdiction over disputes arising from matters claimed by a party, and found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party. In such event the Council so reports and makes no recommendation as to settlement. It may not be easy, in specific cases, to determine whether matters in dispute are or are not " solely within the domestic jurisdiction " of a party. It is safe to say that questions which seriously disturb friendly relations between states, although technically national, will gradually tend to assume an international character so far as to bring them within the cognizance of the League. This general exception to League jurisdiction, both in the abstract and in concrete cases, is one of very great importance. As Professor C. G. Fenwick has said, " one of the outstanding problems of international relations is to secure a form of peaceful procedure for the settlement of disputes which arise out of the complaint brought by one state that it is being injured by acts committed by another state in the exercise of its domestic jurisdiction."

Disputes may be referred to the Assembly, either by the Council of its own motion, or at the request of a party to the dispute if made within fourteen days after the submission of the dispute to the Council. A report of the Assembly, if concurred in by the representatives of those members of the League represented in the Council and of a majority of the other members of the League, exclusive of the representatives of the parties to the dispute, has the same effect as a unanimous report of the Council. It is not probable that the jurisdiction of the Assembly will often be invoked. Unless an Assembly chanced to be sitting when the dispute arose, it would ordinarily be impracticable to convene one; whereas the Council may be quickly summoned in emergencies.

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[2] The representatives of the parties to the dispute who sit in the Council when the dispute is under consideration, either as regular members or as members of the League invited in under Article IV of the Covenant because a matter specially affecting their interests is under consideration, are excluded from this requirement of unanimity.

The peace of the world might be threatened by a dispute between a member of the League and a non-member, or indeed between non-member states — equally a matter of concern to the whole League. This contingency is provided for by Article XVII of the Covenant. In the former event the non-member must be invited to accept the obligations of membership as regards such dispute, upon such conditions as the Council shall deem just. If it accepts, the provisions of the Covenant shall be applied, with such modifications as the Council shall deem necessary. If it refuses, and resorts to force, it shall be subject to the sanctions, economic or military, provided under Article XVI. If both parties are non-members, and both refuse to accept the obligations of the Covenant for the purposes of the dispute, the Council is empowered to " take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute."

Strength and Weakness of the Council as Conciliator

Such in substance are the provisions of the Covenant whereby the Council is constituted an organ of conciliation, with certain sanctions behind it. Its functions in that behalf are not judicial, but rather deliberative, advisory, recommendatory. It undertakes to adjust rather than to adjudge. Within the scope of its functions fall cases not strictly susceptible of judicial determination — cases within the realm of policy rather than of law. Valid objections in plenty may be urged against the Council in the rôle of conciliator: (1) That it is a political body and therefore unfitted to reach just and permanent as distinguished from narrowly expedient conclusions: (2) that it will inevitably be split up into groups or cliques, which will make unanimous decisions rare if not impossible, and thus seriously impair its usefulness; (3) that the Great Powers represented on it will overmatch the small, so that its conclusions will virtually be dictated, not negotiated; (4) that it will be powerless to deal with disputes to which one or more of its influential members happen to be parties.

These and other similar objections are weighty, it must be admitted. It may be urged in reply, however, that political questions must be dealt with, if at all, by political agencies — they lie outside the scope of the judicial function; so that this weakness of the Council would seem to be inherent in the very nature of conciliation. Whether, in grave crises, it will be able to rise above considerations of petty national or group advantage, will depend upon its development as a true organ of international government, and this, in turn, upon the loyalty with which it is supported by the peoples of the world. As to the domination of its Great Power members, it is inevitable that such members, being permanent and enjoying prestige denied the lesser members, will wield a correspondingly disproportionate influence; but on the other hand such members, because of their broader interests, will have a greater stake in the maintenance of peace, and are likely to feel a keener responsibility for peace.

In respect to its general make-up, and its connection with other League agencies, the Council is well adapted to the task of conciliation. It is not so large as to be unwieldy; it can be summoned within a few hours to deal with swift crises — as happened, for example, in the Greco-Bulgarian frontier clash later referred to. Nor is it so small as to be unrepresentative. Its membership is well distributed geographically, thus ordinarily giving it the benefit of local points of view and familiarity with local conditions. Especially important is the fact that it has at command all the machinery of the Secretariat, the International Labor Organization, and the technical agencies of the League, enabling it to avail itself of all available sources of information. A brief review of some of the more important disputes with which the Council has dealt will serve to illustrate its methods of work and, incidentally, its elements of strength and weakness.[3]

II. Illustrative Cases

1. *THE AALAND ISLANDS DISPUTE*

The controversy between Sweden and Finland over the Aaland Islands came to the attention of the Council in 1920. The facts, in brief, were as follows: These Islands, some three hundred in number, are situated in an important strategic position in the Baltic Sea, between Finland and Sweden. After the War the inhabitants, for the most part Swedish by descent and language, manifested a desire to sever their Finnish allegiance and unite with Sweden when Finland, formerly a Russian province, gained her independence as the result of the War. Finland declared her intention to grant the Islands a measure of autonomy, but this did not satisfy the inhabitants, whose desire for separation was vigorously supported by the Swedish government. Finland insisted upon her sovereignty over the Islands; the Islanders, backed by Sweden, stood upon the right of self-determination, on the basis of a plebiscite to voice the popular will. Feeling between the two governments became bitter, when Lord Curzon, the British Foreign Minister, brought the matter to the attention of the Council as one " affecting international relations which unfortunately threatens to disturb the good understanding between nations upon which peace depends." Finland not then being a member of the League, and Sweden a member, the case was that of a dispute between a member and a non-member, covered by Article XVII of the Covenant, above referred to.

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[3] The *League of Nations Information Handbook on the Political Activities of the League,* in two volumes, brings the record down to October, 1927. Brief summaries may be found in *Nine Years of the League* (1920–1928) by D. P. Myers, *W. P. F. P.,* Vol. XII, No. 1, and in H. S. Quigley, *From Versailles to Locarno,* 33–36. J. S. Bassett, *The League of Nations* (1928), *passim.,* discusses several of the disputes handled by the Council.

The Finnish claim was that, geographically and historically, the Islands were a part of Finland; that legally her sovereignty over them was indisputable, and therefore she had a right to refuse a plebiscite; and that the differences between the Islanders and the Finnish government related to the protection of an ethnic minority, and therefore, being matters solely within her domestic jurisdiction, were outside the jurisdiction of the League. Sweden held that the Council was competent to act, and that the Islanders were entitled to enjoy the right, often proclaimed by the Allies, of determining whether they should remain with Finland or be incorporated into Sweden. The question, raised by Finland, as to the competency of the Council to deal with the dispute, was referred to a committee of three international jurists, who found that the dispute was not one solely within the domestic jurisdiction of Finland, and that the Council was competent to recommend any solution it deemed appropriate. This legal question out of the way, the Council appointed a Committee of Inquiry to make an investigation on the spot, and to recommend a solution.

After thorough study of the case this Committee filed a report reviewing the historical, economic, and political aspects of the dispute, on the basis of which a settlement was proposed by the Council, and later embodied in an international convention. The main points of the settlement were: (1) Recognition of Finnish sovereignty over the Islands; (2) certain guarantees of autonomy to be given by Finland, providing, among other things, for the preservation of the Swedish language in the schools, and the appointment of a governor acceptable to the population, the Council of the League being empowered to see to it that such guarantees are duly observed; (3) an international agreement for the non-fortification and neutralization of the islands, so as to afford a guarantee that the Islands will never be a source of danger from a military standpoint.

2. *POLISH-LITHUANIAN DISPUTE*

This dispute concerned a boundary line between Poland and Lithuania which had not been defined in the Peace Treaty. The territory in controversy is known as the Vilna district, within which is the town of Vilna. In the war (1920–1921) between Poland and the Russian Bolshevik régime, this territory was occupied by the Poles and later taken by the Bolsheviks. In July, 1920, the Soviet government, by a treaty signed at Moscow, ceded this district to Lithuania, and it was occupied by Lithuanian forces. Later in the same year hostilities broke out between Poland and Lithuania, in territory which the Supreme Allied Council had provisionally given to Poland. The Council was appealed to by Poland to avert war between the two countries. Two problems were presented to the Council — the prevention of hostilities, and the settlement of the territorial dispute. In dealing with the former the Council has thus far been successful; the latter remains unsolved.

To avert hostilities the Council sent out a military commission, composed of English, French, Italian, Japanese, and Spanish officers. This commission negotiated an agreement with the Lithuanian and Polish governments whereby their armed forces were to be kept on either side of a provisional line, pending settlement of the dispute. But in October, 1920, in spite of this agreement, the Polish General Zeligowski crossed the line of demarcation and entered Vilna. Although the Polish government disclaimed his action, it declined to send troops against him, claiming that he was unanimously supported by Polish public opinion. The occupation thus begun has continued to the present time. The military commission remained until early in 1922, when, in view of the Council's failure to adjust the territorial dispute, it was withdrawn.

In attempting to work out a settlement of this question the Council resorted successively to three different methods: (1) A reference of the question of boundaries to a vote of the people concerned; this had to be given up because of the difficulties encountered; (2) direct negotiation between the two states under the presidency of a neutral, a citizen of Belgium, who proposed for discussion two different draft schemes of settlement; this effort also failed; (3) a recommendation of settlement by the Council under Article XV of the Covenant, which proved unacceptable to either of the disputants, notwithstanding strong appeals, both in the Council and in the Assembly, to the statesmanship and good will of the two governments.

On March 24, 1922, Poland annexed Vilna, and the Conference of Ambassadors, on request of Lithuania, fixed the frontier line between Lithuania and Poland. Friction between the two countries has continued to the present time, their differences having come before the Council at a number of its meetings. In December, 1928, Lithuania assented to examination of the questions at issue by the technical organizations of the League. The most that can be said of League action in this dispute is that it has succeeded in averting war between the two countries, and that through its mediation there remains hope of an amicable settlement.

3. *THE UPPER SILESIAN CONTROVERSY*

One of the most complex situations with which the Council has had to deal arose in German Upper Silesia. The Treaty of Versailles provided for a plebiscite in this region to determine whether the inhabitants wished to remain under German jurisdiction or be set off to Poland. On the basis of this plebiscite a frontier was to be established by the Principal Allied Powers. The plebiscite was held on March 20, 1921, under the supervision of an international commission; but neither the governments represented on the Supreme Council,[4] nor the experts consulted, nor the members of the plebiscite commission, could agree as to the proper location of the frontier as indicated by the plebiscite. The controversy was particularly sharp as to the method of dealing with the important industrial and mining region of Upper Silesia. A Polish insurrection broke out there, and the situation threatened hostilities between Poland and Germany, as well as a rupture between the Allies. Under these circumstances the Supreme Council referred the problem to the Council of the League, which accepted responsibility for its solution. Its first move was to designate a Committee, made up of representatives of Belgium, Brazil, China, and Spain, all neutral and impartial states, to conduct a preliminary investigation of all the essential aspects of the question.

The report of this Committee, which embodied draft recommendations to the Council, disclosed the exceedingly complicated nature of the problem. It appeared that the plebiscite alone afforded an inadequate basis of settlement; the geographical and economic conditions of the area must also be considered. The inhabitants were so intermixed, both racially and in their economic interests, that any frontier that could be devised would inevitably create large racial minorities and cut across districts which were industrially interdependent. The problem was how to reduce these minorities to a minimum, while leaving to each state, as nearly as possible, a total population in accord with the plebiscite.

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[4] Set up in 1916, and comprising the Allied Prime Ministers.

In these circumstances the Committee of Four recommended that, whatever new frontier line was adopted, there should be guarantees against any dislocation of existing economic conditions until they should become gradually adjusted to the new régime. For aid in solving the intricate problems of conserving the economic life of Upper Silesia during the period of transition, the Committee sought the advice of experts, who studied the economic, industrial, financial, and administrative needs of the territory. They considered such questions as the distribution of water and electric power, the exchange of fuel, raw materials, and labor, the financial organization of industry, the customs régime, and social legislation. On the basis of the report of this Committee the Council submitted recommendations to the Supreme Council, embracing a description of the frontier line between Germany and Poland in Upper Silesia, and proposals of economic measures designed to guarantee the continuity of the economic life of the region in view of its division, and for the protection of minorities.

This plan of settlement was finally embodied in a convention drafted at a conference over which presided a neutral chairman appointed by the Council. The scheme included a Commission known as the Upper Silesian Mixed Commission, and a Court of Arbitration, both established for a period of fifteen years, and consisting of representatives from each of the two countries, and a neutral president. The former is an organ of supervision and conciliation, the latter an arbitral tribunal to settle any private disputes occasioned by the measures in force during the transition period. Provision was also made for intervention by the Council of the League in certain situations, particularly those concerning the protection of minorities. In view of the well-nigh insuperable difficulties of this problem — which, by the way, was an unsought legacy from the Peace Treaty — the Council did a creditable piece of work. Complete success was unattainable; but the Council's interposition eased the dangerous tension which existed in the plebiscite area, and paved the way for a settlement by negotiation between the parties, which appears to have worked out successfully despite inevitable criticism by dissatisfied partisans on both sides.

4. *THE CORFU CRISIS*

One of the most threatening disputes coming before the Council arose between Italy and Greece in the Summer of 1923. Briefly, its history is as follows: On August 27, 1923, while engaged in the work of fixing the frontiers of Albania, under the supervision of an international commission acting by authority of the Conference of Ambassadors,[5] a group of Italian officers were attacked from an ambuscade on the Greek frontier and assassinated. Two days later an Italian note, reminiscent of the historic Austro-Hungarian note to Serbia, was transmitted to the Greek government, presenting a series of demands upon it, among them an official apology, with honors to be paid the Italian flag by the Greek fleet in the port of the Piræus, a drastic inquiry into the assassination in the presence of an Italian military attaché, capital punishment for all authors of the crime, and an indemnity of fifty million Italian lire to be paid within five days after receipt of the note.

The Greek government in reply denied responsibility for the crime, and refused to accept such of the demands as would constitute an infringement of her sovereignty and honor, while declaring her willingness to express regrets, pay honors to the Italian government by saluting the Italian flag, and grant fair and equitable compensation to the families of the victims. This reply was not acceptable to the Italian government, which forthwith occupied the Island of Corfu as a guarantee of the payment of reparations by Greece. Inasmuch as the officers assassinated were acting for the Conference of Ambassadors, it promptly addressed a note to the Greek government requesting an immediate investigation, and reserving the right to fix indemnities. On the following day Greece laid the matter before the Council of the League, and requested it to take cognizance of the dispute as one likely to lead to a rupture.

Three days after the occupation of Corfu, Greece replied to the Conference of Ambassadors, stating that it was ready to institute an inquiry, and would accept in advance any decision of the Conference on the question of reparations. This action on the part of Greece complicated the case, because it raised the question of jurisdiction as between the Council and the Conference of Ambassadors. When Greece pressed for a settlement of the dispute by the Council, Italy objected to its competence on two grounds: First, that inasmuch as the Conference of Ambassadors was rightfully dealing with the frontier question at the time the crime was committed, it had authority to deal with all the incidents flowing from that crime — the Italian ultimatum, the occupation of Corfu, and the matter of reparations — and that Greece had agreed to accept the judgment of the Conference on the fundamental question of reparations; and second, that the Council had no authority to act even on the grounds on which Greece had appealed to it, because the dispute was not one which threatened war, Italy having solemnly declared that the measures she had taken were not of a hostile nature.

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[5] A body consisting of the Allied Ambassadors to France, established at Paris in July, 1919, to act officially for the Principal Allied Powers with respect to the interpretation and execution of the Peace Treaties. Hershey, *op. cit.*, 144, note.

Greece pressed her case before the Council, however, requesting the appointment of a commission to investigate the crime and settle the indemnity which she should pay. She also vigorously denied the validity of the Italian claim that the Council was not competent to take cognizance of the dispute. While the Council was discussing the case, it was advised by the Conference of Ambassadors that the latter was considering how the inquiry suggested by the Greek government should be conducted. To this the Council replied declaring its intention to investigate, in conjunction with the Conference, the manner in which the inquiry should be carried out, and submitting to the Conference minutes embodying suggestions as a basis of settlement. Four days later the Council received another communication from the Conference of Ambassadors embodying the text of a note which it had transmitted to the Greek government, in which it had set forth, in substance, the terms of settlement which the Council had already proposed to the Conference. These terms were accepted by both Greece and Italy, and the Council gladly acquiesced in the action taken by the Conference.

Important Questions in the Corfu Case

The course pursued by the Council in this case has been criticized, on the ground that it exhibited an indisposition to interpose in a dispute between a Great Power and one of lesser international importance. In fact, as has appeared, the Council faced a delicate situation because the Conference of Ambassadors proceeded to take jurisdiction, and Greece at first appeared to acquiesce in its action. For the Council to have insisted upon its sole competence, under such circumstances, might have raised serious complications; and after all, a peaceful settlement, by whatever means achieved, was the end sought.

The case is especially important for the light it throws on the competence of the Council to take cognizance of disputes under circumstances analogous to those presented here. So impressed was the Council by the implications of the case that it took steps to have a special committee of jurists pass upon a series of questions intended to clear up the doubts raised by Italy in opposing the Greek demand for action by the Council — namely, whether the Council had jurisdiction because of the facts (1) that the Conference of Ambassadors had assumed the right to act, and (2) that Italy had denied that the dispute was one threatening war. In general, the jurists sustained the authority of the Council on the second point, holding that it alone is to judge as to whether a dispute is one likely to lead to a rupture; and further, that where a dispute likely to result in a rupture is submitted to the Council under Article XV of the Covenant, it is barred from inquiring into it only in case the dispute is found to be solely of a domestic nature. The jurists also justified the action of the Council in declining to insist upon the exclusive right to deal with the case by holding, in effect, that where a matter in dispute is already being regularly proceeded with in some other jurisdiction, in arbitration or other judicial proceedings, for example, by agreement of the parties, it should properly be referred back to such jurisdiction.[6]

One other interesting question was raised in connection with this case, but not categorically answered. The action of Italy in taking possession of Corfu was avowedly coercive; Italy denied, however, that it was an act of war. But should the Council have deemed it such, notwithstanding such disavowal? In other words, as a general proposition, when measures of coercion are resorted to by a member state, without prior recourse to pacific methods of settlement, do they necessarily constitute a violation of the member's obligations under the Covenant, despite its declaration of non-warlike intent? The jurists held, on this point, as follows:

> Coercive measures which are not intended to constitute acts of war may or may not be consistent with the provisions of Articles XII to XV of the Covenant, and it is for the Council, when the dispute is submitted to it, to decide immediately, having due regard to all the circumstances of the

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[6] See *League Information Handbook on the Political Activities of the League*, Vol. I, Annex, 124 ff.

case and to the nature of the measures adopted, whether it should recommend the maintenance or the withdrawal of such measures.

This does not mean, of course, that the Council may permit the coercive measures already embarked upon to develop into a state of international war. Rather should it treat the aggressor state as acting as an instrument of the League, and under the supervision of the League, in behalf of international peace and justice.[7]

5. *GRECO-BULGARIAN FRONTIER INCIDENT*

A still more critical situation arose in the Autumn of 1925, on the frontier between Greece and Bulgaria. On October 19 of that year Greek and Bulgarian sentries exchanged shots on the frontier near Demir-Kapu, northeast of Salonika. A Greek sentry was killed; firing between frontier detachments ensued; a Greek officer, advancing under a flag of truce, was shot dead. At the moment responsibility for the outbreak was shrouded in mystery, and feeling on both sides ran high. The Bulgarian government proposed a mixed commission to fix responsibility; Greece countered with a demand for apologies and reparation. On receipt of news, later proven untrue, that a Bulgarian battalion was attacking the Greek post at Demir-Kapu, the Greek government ordered an army corps to advance into the valley of the Struma, and on October 22 Greek troops entered Bulgarian territory.

The same day the Bulgarian government wired the Secretary-General of the League of Nations requesting that the Council be summoned immediately, under Articles X and XI of the Covenant, stating that it had ordered its troops not to resist the invaders. This was on Friday. The Secretary-General immediately summoned a special meeting of the Council for the following Monday, at Paris. M. Briand, Acting President of the Council, simultaneously telegraphed the two governments, reminding them of their obligations under the Covenant, and exhorting them to order their troops to retire behind their respective frontiers. It turned out that this telegram arrived in the nick of time to prevent a conflict between Greek and Bulgarian forces in front of Petritch, and possibly the definite beginning of war between the two countries. The Greek attack on Petritch, which had been fixed for 8:30 o'clock on the morning of October 24, was stopped by an order from Athens despatched immediately on receipt of the telegram from the Acting President of the Council to the Greek and Bulgarian governments, which arrived at 6 o'clock that morning.

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[7] On the Corfu affair see C. de Visscher, *The Stabilization of Europe* (1924), 127 ff.; *League Information Handbook on Political Activities,* Vol. I, 93 ff.; *W. P. F. P.,* Vol. VII, 177–181; articles by President A. Lawrence Lowell and Professor Manley O. Hudson on the Corfu Crisis, Vol. VI *W. P. F. P.,* 169 ff. The statement by Mussolini in his *Autobiography,* p. 252, that "the League declared itself incompetent to judge and solve the incident," referring to the Corfu affair, is not borne out by the record.

The first business of the Council was to direct the evacuation, by order of both governments, of all occupied territory, so as to guard against the opening of hostilities; its next was to hear the representatives of the two governments, who appeared before it and gave their versions of the affair, each undertaking to place responsibility upon the other. The Bulgarian claim was that Bulgarian troops had not occupied Greek territory, while Greece contended that its frontier had been crossed, and that its advance into Bulgarian territory was purely defensive. In due time the Council decided to appoint a Commission of Inquiry to fix responsibility and to pave the way for a consideration of the question of indemnity or reparations. This Commission made a thorough investigation on the spot, and communicated its findings to the governments concerned. In brief, the Commission was unable to determine which side began the firing, or to clear up the circumstances attending the death of the Greek officer. The state of mind of the population along the frontier, and of the soldiery, contributed to the incident, as did the close proximity of the sentry posts, and the defective organization of the frontier guards.

The Greek troop movements, which the Commission found to have been technically unjustified, were occasioned by exaggerated reports as to similar movements on the other side. Public feeling in Athens was inflamed by news of the killing of the Greek soldiers, and by distorted reports of the general situation. The Commission found that Bulgaria had acted in conformity with the Covenant of the League, and that Greece, by occupying Bulgarian territory with its military forces, had violated the Covenant. Accordingly a total indemnity of thirty million levas was levied upon Greece. The report of the Commission also embodied a series of military recommendations intended to render the frontier more secure against future outbreaks like the one under investigation.

6. *THE MOSUL DISPUTE*

The foregoing cases illustrate the Council's method of approach to international disputes, in the performance of its duties as an organ of conciliation. Many other disputes have come before it, in one form or another. Several have involved frontier questions, arising from provisions of the Peace Treaties delimiting new frontiers, in which the Council was called upon to act either as a mediating body or under specific treaty provisions. Thus, in 1921–1922, the frontiers of Albania engaged its attention. In 1924 it was called upon to deal with a dispute between Great Britain, as mandatory of Iraq, and Turkey, over the frontier between Iraq and Turkey — the so-called Mosul question. This question came to the League under a provision of the Treaty of Lausanne whereby, if Great Britain and Turkey could not reach a friendly agreement on the frontier within nine months, the dispute should be referred to the Council of the League. The negotiations were unsuccessful, and Great Britain accordingly submitted the dispute to the Council. This matter was pending before the Council for more than a year. In the course of its consideration the Council set up a special committee to aid it in reaching a decision; established a provisional boundary; referred to the Permanent Court of International Justice, for an advisory opinion, the question raised by Turkey as to whether, under the provisions of the Treaty of Lausanne, its action was to take the form of an arbitral award, a recommendation, or a simple mediation; accepted the decision of the Court that it was empowered to make a binding determination of the frontier, as Great Britain claimed; and finally established the frontier. Thereafter Great Britain and Turkey settled the differences between them.

7. *DISPUTE BETWEEN BOLIVIA AND PARAGUAY*

In some cases, as has appeared, the Council has been forced to take firm action to meet urgent situations; in others its good offices have been sufficient to induce agreement or voluntary pacific measures by the disputants without formal action on its part. The latest illustration of the latter class of cases was the dispute, in December, 1928, between Bolivia and Paraguay, both members of the League. It began, much as did the Greco-Bulgarian crisis, with a clash between troops on the frontier — this, in turn, being the outcome of intense feeling between the two countries over a long-standing territorial dispute. Both countries stated their cases to the Council, and were exhorted to conform to their obligations under the Covenant. This appeal, reinforced by the efforts of the Pan-American Arbitration and Conciliation Conference then in session at Washington, finally prevailed, and both governments accepted the good offices of this Conference.[8]

III. General Principles of Council Procedure

Under Article XI of the Covenant the League is enjoined, in case of war or threat of war, to " take any action that may be deemed wise and effectual to safeguard the peace of nations." As the duty to fulfill this League obligation would ordinarily fall upon the Council, it has given careful consideration to the appropriate measures to be taken to that end. The matter was referred to a committee of the Council, whose report, made in March, 1927, suggests means of enforcing this obligation as expeditiously as possible. In cases where there is an imminent threat of war the committee recommended: That the Council should meet with the utmost promptitude; that even before it met, it was desirable that telegraphic appeals be sent to the parties to the dispute to refrain from hostile acts; that the Council should urge the great importance of avoiding a breach of the peace, and see to it that nothing be done to aggravate or extend the dispute, or to compromise a settlement; and that the Council might see fit to send representatives to the locality of the dispute to satisfy itself that its measures have been carried out, using for this purpose authorized experts whose names, listed beforehand, the Secretary-General would have at the disposal of the Council. If any of the parties disregard the advice or recommendations of the Council, it may consider more serious measures, such as a recommendation to its members to withdraw all their diplomatic representatives accredited to the state in question, or possibly naval or air demonstrations. In any event the members of the League not represented in the Council should be kept fully informed, and their collaboration requested when necessary or desirable by sending a communication to them or by summoning a special meeting of the Assembly.[9]

Consideration has been given to measures to enable the League to act more promptly and effectively in handling critical situations. One in particular has been improved communications at the disposition of the League. It has taken the form, mainly, of proposals to establish an aerodrome at the seat of the League, and a wireless station that would insure independent communications for the League in emergencies.[10]

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[8] On this dispute, from the standpoint of the League, see *Monthly Summary* for January, 1929, p. 399 ff., and June, 1929, p. 202–203. For a brief history of this dispute see *Current History*, Vol. XXIX, 661 ff. (January, 1929).

[9] For text of this report see *Monthly Summary* for January, 1928, 376–378; also T. P. Conwell-Evans, *The League Council in Action* (1929), Appendix III.

So also, as a measure of "first aid," there was proposed to the Assembly of 1929 a scheme for financial assistance to any member state threatened with aggression, by way of a loan authorized by the Council and guaranteed by the parties to the proposed convention. The matter was referred to the Council for elaboration and ultimate submission to the member states.[11]

An International Conference Assured in Crises

Three or four aspects of the conciliation procedure of the Council, illustrated by the foregoing cases, deserve comment. First, an international conference is automatically guaranteed as soon as a dispute threatens peace — unless, indeed, a situation could be conceived of in which no one of the member states responsible for League policy should see fit to invoke its interposition to preserve the peace. Herein the League principle of collective intervention, vitalized by a piece of machinery ready to function on the instant, introduces a new and potent factor in international relations. Before the League the probability of conference in a crisis was in inverse proportion to the intensity of the crisis; the agencies of adjustment were often least effective when most needed.

Second, the Council does not act in the Star Chamber spirit. As shown in the Greco-Bulgarian and Corfu crises, the states in dispute are admitted to its deliberations and permitted to present their cases. This open procedure not only conduces to a better understanding of the situation in hand, but inspires confidence on the part of the disputants and throughout the membership of the League.

Council Resorts to Inquiry, not to Force

Third, it is noteworthy that the first move made by the Council, after taking steps to avert open hostilities, is to institute an inquiry into the facts of the dispute, through a body of competent experts, thus constituting itself a Commission of Inquiry. The Greco-Bulgarian crisis illustrates capitally how a mere incident may rapidly develop into a threatening situation largely through ignorance, and the suspicion and panic begotten of ignorance, on both sides. To clarify the facts of a dispute, by searching, impartial investigation, is to go far towards a settlement.

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[10] See *Monthly Summary* for April, 1929, 86–87.

[11] On this proposal see editorial by J. W. Garner in 23 *A. J.*, 829 (1929). See also Ch. XXXI, Sub. V.

Finally, it should be observed that in no case has the Council appealed to force. Its method is that of counsel and conciliation; it endeavors to stimulate in the contending parties a sense of their responsibility for international peace, and of their obligation under the Covenant to seek a rational settlement. This technique of the Council in dealing with international disputes often gives it the appearance of weakness, indecision, and procrastination; it tenders advice when the international peace seems to require the exercise of power. But its procedure in this regard has been as wise as it has been necessary — wise because international government has not yet advanced to the point where legalized resort to force by its constituted agencies can confidently rely upon the backing of public opinion, and necessary because, as the Covenant now stands, the League commands no force save as the member states endow it therewith at the moment.

The Council has not been uniformly successful in the rôle of conciliator; the Vilna dispute is still open. In some cases it has appeared to lack courage in performing the functions clearly conferred upon it by the Covenant, erring on the side of caution rather than of vigor. Some of its problems, bequeathed to it by the World War, have been especially difficult because of the psychology of the post-war period, and its unsettled economic and social conditions. But it is already safe to say that the Council, as a recognized agency of conciliation, has demonstrated its value in international relations, even if it has failed to meet the expectations of the more ardent advocates of the League. Critics may urge that international government must be backed up by force, and that the Council's lack of coercive power renders it negligible in crises. But as its position becomes assured, the fact that unarmed it seeks to mobilize public opinion on the side of settlements based upon justice rather than might will arm it with a moral authority which the nations will find it increasingly impolitic and hazardous to resist.[12]

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[12] See *The Problems of Peace, Lectures delivered at the Geneva Institute of International Relations,* 1926, Lecture by Paul Mantoux, formerly Director of the Political Section of the League Secretariat, on "Action of the League of Nations in International Disputes." For Professor Quigley's conclusions as to the Council's effectiveness in dealing with international disputes see *From Versailles to Locarno* (1927), 36–37. For a list of disputes submitted to the Council under the Covenant down to 1929 see Conwell-Evans, *op. cit.,* Appendix II.

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CHAPTER XXXIV

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

I. ESTABLISHMENT OF THE COURT

Attention must now be turned to the crowning achievement of the post-war era in the field of international jurisprudence — the establishment of the Permanent Court of International Justice.[1] It has appeared that the creation of a true international court of justice engaged the attention of the Second Hague Conference.[2] Two plans were there proposed — that of an International Prize Court, and that of an International Court of Arbitral Justice, both of which failed of ultimate adoption. These schemes proved abortive, as has been seen, not because the principles they embodied were deemed unsound, but for very practical reasons — as to the Prize Court, the unsatisfactory state of the law it would be called upon to administer, and as to the Court of Arbitral Justice, the impossibility of agreeing upon the composition of the Court.

Thus the matter of international courts stood when the Peace Conference framed the Covenant of the League of Nations. The Hague Permanent Court of International Arbitration was in existence — not a true court, indeed, but the embodiment of the international judicial principle; and two attempts to organize a true international court had failed.[3] The experience of the Second Hague Conference had demonstrated the delicacy of the problems involved in World Court projects. In part for this reason, possibly, but mainly because the Peace Conference, with its knotty political questions and its contentious atmosphere, was ill-adapted to work out the technical details of a judicial institution, the League was organized without an attendant Court.

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[1] The shorter, unofficial title, "World Court," will be used hereafter, for convenience.

[2] *Ante,* Ch. XVIII.

[3] Mention should be made of the fact that a Central American Court of Justice had been established in 1907. It later passed out of existence, but was revived, in a modified form, at the Central American Conference held at Washington in 1922–1923. See *Ante,* Ch. XVIII.

But the Conference was aware of the need of such an institution to support and strengthen the political machinery it was creating, and especially to further one declared purpose of the League — the promotion of international peace and coöperation, "by the firm establishment of the understandings of international law as the actual rule of conduct among governments." Accordingly the Covenant, in Article XIV (1) charges the Council with the duty of formulating and submitting to the members of the League for adoption plans for the establishment of a Permanent Court of International Justice; (2) declares the Court, when established, competent "to hear and determine any dispute of an international character which the parties thereto submit to it," and (3) empowers it to "give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." Thus an International Court of Justice was provided for and the general scope of its jurisdiction indicated.

The Council took early steps to carry out the mandate of the Covenant, by appointing a commission of private jurists to draft a plan for the proposed Court. This plan, taking the form of what is commonly called the World Court Statute, constitutes the legal basis of the new tribunal. It was submitted by the Commission of Jurists to the Council, and by the Council to the governments of the nations in the League and to the Assembly; and finally, as amended by the Council and Assembly, it was sent out to the members of the League for ratification.[4] Thus it appears that the Statute of the Court — its constitution — is not a part of the Covenant of the League, nor was it the creation of the League. True, its formulation was under the direction of the League, and when it went out to the member states for adoption it bore the approval of the Council and the Assembly. But their function was primarily one of draftsmanship; they had no power to ratify, and did not assume any such power. The Statute became effective by force of its ratification by the member states, and then only as between the states so ratifying.[5]

II. Election and Qualification of Judges

In the constitution of the Court one of the most difficult problems was its composition — the rock upon which the Court of Arbitral Justice proposed at the Second Hague Conference struck, as has appeared. It was solved by the ingenious device of an election by the Council and the Assembly of the League, acting independently, the procedure being as follows: Each national group in the Hague Permanent Court of Arbitration is entitled to nominate not to exceed four candidates, only two of whom shall be of their own nationality. If a member of the League is not represented in the Hague Permanent Court, it may appoint a national group, as prescribed by the Hague Convention of 1907 establishing the Arbitral Court, for the purpose of making the necessary nominations.[6]

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[4] For text of the World Court Statute see Appendix C.

[5] This point is made emphatic because of the quite common misunderstanding as to the nature and adoption of the World Court Statute.

From an alphabetical list of the persons so nominated the Assembly and the Council elect, independently of each other, by absolute majority vote of each body, the judges and deputy-judges. If after three meetings for the purpose of the election seats remain unfilled, resort may be had, at the request of either body, to a joint conference of six members, three from each body, for the purpose of selecting and submitting to their respective bodies one name for each vacant seat. If this device fails, the members of the Court already chosen shall proceed to fill the vacancies by selection from among those candidates who have obtained votes either in the Assembly or in the Council. It is apparent that this plan does not absolutely insure an election of judges by the League bodies; it does make it certain that if part of the panel is filled by election, the remaining seats will be filled even though the Assembly and Council cannot agree. This procedure as elaborated in the Statute is notable in two or three respects, but especially in that it solves the problem, which proved insoluble at the Second Hague Conference, of the conflict between the large states and the small as to representation in the Court. The Council as the representative of the large states more particularly, and the Assembly as the representative of all the states but dominated in point of number by the smaller states, must concur in their choice of judges. The plan may not give the small states the quota of judges they deem themselves entitled to — it certainly cannot give them what they contended for at the Second Hague Conference, equal representation with the large states; but it assures them equality of voice in the choice of judges — more than equality, in fact, as the Council is now constituted.

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[6] In the American proposals of adherence to the Court, made by the Senate in 1926, it was stipulated that the United States should be permitted to participate equally with the other states members of the Council and Assembly in the election of judges and deputy-judges and the filling of vacancies; and this privilege was conceded without question by the signatories to the Statute.

Personnel of the Court

The Court thus chosen consists of fifteen independent judges — eleven regular judges and four deputy-judges.[7] They are elected for a term of nine years and are eligible for re-election. The Statute expressly provides that they shall be chosen, " regardless of their nationality, from amongst persons of high moral character who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law." The scheme of nomination and election adopted affords a high degree of assurance that the judges will be qualified for their high office. By Article 6 of the Statute each Hague nominating group is recommended to " consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law." Moreover, the statute contemplates a broadly representative Court. Article 9 provides:

> At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

This provision implies that the main geographical sections of the world shall receive due recognition in the distribution of judges, and such has been the result.[8] No state can have more than one of its nationals on the bench at any one time.

But it is to be borne in mind that the judges are jurists, not diplomats; in no sense do they represent the states from which they come; they are international, not national, officers. A judge is not disqualified from sitting in a case by the fact that his state is a contesting party; moreover, what has been called a concession to nationalism appears in the provision that "if the Court includes upon the bench a judge of the nationality of one of the parties only," the other party may have a judge of its own nationality — either a deputy-judge, if there be one, or a judge chosen by the party. The obvious purpose of this provision, which departs from the sound theory that judges should be beyond the suspicion of bias because of their relations with the parties, was to give litigant states the assurance that their special points of view would be given due weight by the judges in the consideration of cases. The Statute prescribes that any previous connection with a case on the part of a member of the Court, in any capacity whatever, disqualifies him from participation in its decision.

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[7] Deputy-judges are called upon to sit in an order prescribed by the Court, when for any reason a regular judge cannot be present or is disqualified. A Committee of Jurists appointed in December, 1928, to consider a revision of the Statute recommended that the number of ordinary judges be increased to fifteen, and that there be no deputy-judges. The amendments proposed by this Committee have not yet been ratified, but the Assembly of 1930, acting under Article 3 of the Statute, increased the number of judges to fifteen, and that number were elected. It had no power to abolish the office of deputy-judge, so that four deputy-judges were also elected. See *Appendix C, note 1.*

[8] The wide geographical distribution of the judges is shown by the personnel of the Court as the result of the recent (1930) election by the Assembly and the Council. It includes members from Belgium, China, Colombia, Cuba, France, Germany, Great Britain, Italy, Japan, Netherlands, Poland, Roumania, Salvador, Spain, and the United States; while the deputy-judges are from Austria, Finland, Jugoslavia, and Portugal. Thus all the continents except Africa are represented.

Procedure in the Election of Judges

At the first election, in 1921, there were sixty or more candidates from whom the eleven judges and four deputy-judges were chosen. The Assembly took several ballots to complete its list of eleven judges, nine of whom were on the list selected by the Council; an additional ballot in the Assembly and a comparison of second lists resulted in the choice of two more judges. Three of the four deputy-judges were chosen on three additional ballots in the Assembly and a comparison of Council lists; the choice of a fourth deputy-judge went to a joint conference committee. Several special elections have been held, owing to the death or resignation of judges. The election of Judge Hughes to succeed Judge Moore, resigned, took place on September 8, 1928. He was the unanimous choice of the Council, and received forty-two out of the forty-eight votes cast in the Assembly. Two more vacancies were filled in September, 1929, the successful candidates being elected by equally decisive votes in both Council and Assembly. On September 17, 1930, Frank B. Kellogg was elected to succeed Judge Hughes, resigned, on the first ballot in both bodies; and almost immediately thereafter he was reelected for the full term of nine years.

At the second election, in 1930, the electoral procedure was carried through in one day, fifty-two members of the League voting in the Assembly. On the first ballot in the Assembly fourteen candidates received a majority vote, and as these same candidates received a majority in the Council, they were elected. Several more ballots in the Assembly were necessary before the two bodies gave majority votes for the fifteenth member of the Court. The deputy-judges were elected after several more ballots, there being no necessity of a joint conference to complete the election.[9] Thus the electoral procedure devised by the Commission of Jurists has been tested, both in general and special elections, and has worked out successfully.[10] It has two anomalies, neither practically important. One is that states which have not accepted the Statute may nevertheless, if members of the League, participate in the election of judges; the other that states which have adhered to the Statute may not have the right to take part in the election of judges, because non-members of the League, unless expressly given the right to do so.

Parties Eligible to Appear Before the Court

Only states or members of the League of Nations may be parties to cases before the World Court; individuals have no standing therein. An individual may, indeed, persuade his government to espouse his cause — as practically happened in 1924, in the Mavrommatis Palestine Concessions case, where the Greek government appeared in behalf of one of its nationals. States other than members of the League are admitted to the Court under conditions to be laid down by the Council, but in no case shall such provisions " place the parties in a position of inequality before the Court."[11] These conditions were prescribed by a resolution of the Council adopted May 22, 1922, the essential provision of which is " that such state shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court . . . and undertakes to carry out in full good faith the decision or decisions of the Court, and not to resort to war against a state complying therewith."[12] Thus the Court is open to non-members of the League; but when a non-member state becomes a party in a case before it, inasmuch as it makes no contribution to the Court budget through the League, the Court fixes the amount it shall contribute to the expenses thereof.

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[9] On the procedure at the first election see de Bustamante, *op. cit.*, 128 ff.; Hudson, *op. cit.*, 8; Fachiri, *op. cit.*, 14 ff. On the second election see *Official Journal* of the eleventh session of the Assembly, 270 ff.; also Manley O. Hudson, " The Election of Members of the Permanent Court of International Justice," 24 *A. J.*, 718 (Oct. 1930).

[10] The chief credit for this scheme of election is generally accorded to Mr. Elihu Root, American member of the Committee of Jurists which framed the Statute.

[11] *Statute, Art. 35.*

[12] For text of this important resolution, see Hudson, *op. cit.*, 364, or Quigley, *op. cit.*, 118–120.

The Court is required to hold a session every year, and extraordinary sessions may be summoned whenever necessary; it sits at The Hague in the Carnegie Peace Palace. When engaged in the business of the Court its members enjoy diplomatic privileges and immunities. The Statute contemplates that ordinarily the full Court shall sit in each case, but in any event a quorum of nine judges is required.[13]

III. JURISDICTION OF THE COURT

Proposals of the Committee of Jurists

More troublesome than the problem of determining who should be litigants before the Court was that of its jurisdiction. On this question two general views developed in the course of formulating the Statute: One that the Court should have a measure of compulsory or obligatory jurisdiction, after the analogy of national courts; the other, that its jurisdiction should be purely voluntary, on the basis either of general treaties between the member states stipulating for the submission of specified classes of cases, or of special agreements covering particular disputes. The former view was favored by the Committee of Jurists, whose original draft of the Statute provided that the Court should have jurisdiction, as between members of the League, of all "cases of a legal nature, concerning (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature and extent of reparation to be made for the breach of an international obligation; (e) the interpretation of a sentence passed by the Court.[14]

This jurisdiction, it will be noted, embraced the general categories of judicial questions ordinarily dealt with by domestic courts in civil cases. Confessedly it was a drastic proposal, having regard to the purely voluntary character of the jurisdiction of the Hague Permanent Court of International Arbitration, and of the Court of Arbitral Justice proposed at the Second Hague Conference; and as it turned out, it was too radical to be acceptable to the League

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[13] *Art. 25.* The Court publishes an annual report giving detailed information regarding its organization and activities, with a list of its judgments and opinions, including also an elaborate bibliographical list of official and unofficial publications concerning the Court.

[14] For the text of this draft scheme see Fachiri, *op. cit.*, 289 ff.

Council and Assembly when the draft came before those bodies. The Council revised the draft by eliminating this compulsory feature, basing its action in part — ostensibly, at any rate — upon the construction placed upon Article XIV of the Covenant, wherein it is provided that the Court " shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it." This clause, it was urged, imported a Court of voluntary jurisdiction, and to confer compulsory jurisdiction upon it would be to amend the Covenant by indirection.[15] The Assembly finally adopted this point of view, partly on principle and partly for fear of hazarding the ratification of the Statute by the Great Powers in the Council. But a provision was amended into the Statute, in some sense a compromise between these two points of view as to jurisdiction, in the form of an optional clause, so-called, whereby states may, in adopting the Statute, declare that they recognize as compulsory, *ipso facto* and without special agreement, in relation to any other member or state accepting the same obligation, a jurisdiction identical with that contemplated in the plan of the Committee of Jurists, except as to item (e), which was omitted.

Jurisdiction as Finally Established — The Optional Clause

Thus, as the Statute was finally adopted, the jurisdiction of the Court comprises "all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force." Moreover, as stated above, beyond this sphere of voluntary and conventional jurisdiction the states may, in signing or ratifying the Protocol or agreement accompanying the Statute, or at any later time, confer upon the Court compulsory jurisdiction over certain classes of its disputes with other states agreeing to a like jurisdiction. This provision made the jurisdiction of the Court over these cases of a legal nature optional with the member states rather than compulsory for all states adopting the Statute.[16] Acceptance of the optional clause may be made unconditionally, or on condition of reciprocity on the part of several or certain states, or for a limited time.

To repeat, then, mere acceptance of the Statute does not carry with it the obligation to submit any dispute whatever to the Court.

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[15] For discussion of this interesting question see article by Professor P. J. Noel Baker, in *British Year Book of International Law for 1924*, 68 ff.

[16] *Statute, Art. 36.* Thus the word " optional " refers to the adoption of the clause in the Statute which gives the Court compulsory jurisdiction over the cases specified, as to the states adopting it.

States may, however, in accepting it bind themselves to submit to the Court legal disputes with other states assuming a like obligation, falling within the four classes specified above. Furthermore, states may by treaty bind themselves in advance to resort to the Court for the settlement of agreed categories of disputes. States not accepting the jurisdiction of the Court in advance bring their disputes before it by specific agreement in each particular case.

Up to March, 1930, fifty-two of the fifty-four members of the League of Nations had accepted the Court by signing the Protocol to which the Statute is attached, together with two states — Costa Rica and Brazil — formerly but not now members of the League. Of these fifty-four states, twelve had not followed their signatures with ratification.

At the same date more than forty states all told had accepted the optional clause by formal signature; fifteen of them, including France, Italy, the United Kingdom, and all the British Dominions, did so during the Tenth Assembly in September, 1929. Many of the states signed on condition of reciprocity, and several under other conditions. Up to the date indicated some twenty-seven states had taken final action whereby they were bound by the clause.

IV. RULES OF LAW APPLIED BY THE COURT

Inasmuch as the Court was to be a true court of justice rather than primarily a tribunal of arbitration, it was deemed advisable, if not necessary, to specify in the Statute the sources whence it should derive the rules to be applied in reaching its decisions. Accordingly Article 38 of the Statute provides that the Court shall apply: (1) International conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom, as evidence of a general practice accepted as law; (3) the general principles of law recognized by civilized nations; (4) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law, this last specification being qualified by a later provision that the decisions of the Court itself shall have no binding force " except between the parties and in respect of that particular case." [17]

The first and second of these classes of legal rules distinguish, on the one hand, between those established by treaties between, or recognized by, the litigating states, either the law-making treaties already referred to, or special conventions entered into by the parties to a particular dispute and as a basis for the settlement of that dispute, and the customary or common law of nations, on the other. Thus in submitting a dispute, the parties may lay down their own rules of law, leaving the Court to apply them to the ascertained facts of the case; or they may elect to stand upon such rules of customary law as the Court may deem controlling. The range of judicial inquiry opened up by the third and fourth sources of law to be applied by the Court is not so clearly apparent. The third provision, which contemplates resort by the Court to the general principles of law recognized by civilized nations, may have substantially the same meaning as the provision in the convention establishing the Hague Permanent Court of Arbitration, to the effect that disputes are to be settled " on the basis of respect for law."[18] However this may be, the Court must first apply the rules found in international conventions between the parties, and then accepted principles of customary international law, before resorting to recognized general principles of law.

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[17] *Art. 59.*

The fourth provision appears to sanction a line of judicial inquiry which the Court would have pursued in any event — resort to judicial decisions and the teachings of qualified publicists, as evidences of the law applicable to disputes before the Court. As a matter of fact, apart from cases wherein the parties have laid down conventional rules, the Court will ascertain and apply the law very much as do national courts like the United States Supreme Court, when dealing with cases involving questions of international law.[19] In this connection two more significant features of the Statute may be referred to. The first is found in the final clause of Article 38, to the effect that the earlier provisions of the article regarding the law to be applied " shall not prejudice the power of the Court to decide a case *ex aequo et bono,* if the parties agree thereto." This broadens the competence of the Court beyond the exercise of the strictly judicial function, and gives it quasi-legislative power, if the parties to the particular dispute so agree. This provision seems to make the Court one of arbitration, as well as one of strict justice.

The Doctrine of Precedents Under the Statute

The other notable provision of the Statute relates to the binding effect of a decision of the Court, restricting it to the parties and to the particular case. This means that a decision of the Court is not to be taken as a binding precedent in any subsequent case; it settles the law only for the particular case in which it is rendered, and as between the parties thereto. If it resulted from this that the doctrine of precedents — that is, the rule of practice followed by the American and English courts of recognizing the ordinarily binding effect of prior decisions — could find no place in the practice of the World Court, its value in the development of international law would be materially lessened. But in fact, while the Court may not technically treat its own decisions as binding precedents, it will naturally follow them in later cases involving similar principles, and thus build up an important body of case law analogous to that of national courts.[20]

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[18] Hudson, *op. cit.,* 14.

[19] Charles Warren, *The Supreme Court and Sovereign States* (1924), 53–58.

Indeed, much is to be expected of the Court as a factor in building up the code of international law. Many disputes with which it will deal will, of course, involve no general principles of international law, but will relate rather to narrow questions of treaty interpretation, or to questions of fact in cases of alleged treaty violation, or will stand upon agreed rules applicable only to the particular case. But others will call for the elucidation of rules of the common law of nations, and in perhaps rarer cases will enable the Court to expand existing rules in the exercise of a kind of equity jurisdiction. To the performance of this important function the Court is admirably adapted. In the first place, it is broadly international; no single state may have two of its nationals therein at the same time. At least nine judges must sit, and ordinarily there will be eleven. Thus the influence of no one state can predominate, even if, as is quite unlikely, the judges should be disposed to stress the national rather than the international point of view.

Rules of Court Procedure

A judge is not disqualified in a case by the fact that the state of which he is a national is a litigant; but in that event, as already stated, the other party may choose one of its own nationals to sit, if no such national is a regular member of the Court. While technically this provision may impair the strictly judicial quality of the Court, practically it will not do so, because the Court decides by majority vote. Indeed, this provision will predispose states to resort to the Court, for it will afford assurance to every litigant that its side of the case, its particular point of view, will be presented, not only by its representatives before the Court, but in the deliberations of the Court itself. Again, its proceedings are public, and it is required to present its decisions in the form of written, reasoned opinions. Following the practice in national courts, dissenting judges may deliver separate opinions, so that when the Court divides on close questions, the differing views of the judges may be made a matter of public record. Thus in time the opinions of the Court should constitute a body of case law of the highest authority.[21]

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[20] On this point see Fachiri, *op. cit.*, 90–92.

Three Special Chambers

The Statute provides for three Special Chambers, as they are called, which should be mentioned in passing. Two of them are intended to deal with special classes of cases, and the third to afford a more expeditious procedure than would ordinarily be possible with the full bench. The first chamber is empowered to hear and determine, in behalf of the Court, labor cases, particularly cases referred to in the labor parts of the Peace Treaties. It is composed of five judges, appointed by the Court every three years, assisted by four technical assessors, who sit with the judges but have no right to vote. These assessors, or technical advisers, are chosen with a view to insuring a just representation of the competing interests. The second chamber, constituted like the first, is empowered to deal with cases relating to transit and communications, particularly cases referred to in those parts of the Peace Treaties relating to ports, waterways, and railways. The judges composing this chamber will be assisted by assessors when desired by the parties or ordered by the Court. The third chamber of three judges, designed with a view to the speedy disposition of business, is formed by the Court annually. These chambers hear cases only when the parties so demand; if no such demand is made, the full Court sits.

V. Advisory Opinions and Judgments

It will be recalled that Article XIV of the Covenant of the League empowers the Court provided for therein to "give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." An advisory opinion of the Court differs from a decision in that it does not represent the outcome of judicial action upon a controversy brought to issue and trial, but rather the opinion of the Court upon some question in dispute intended for the guidance of the Council or the Assembly in dealing therewith.

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[21] The Court is empowered to frame rules for regulating its procedure, and has done so in an elaborate set of rules containing seventy odd articles.

As to this jurisdiction of the World Court, two or three observations need be made. First, it can be invoked only by the Council or the Assembly. When the Jurists' draft Statute was before these bodies, it was urged that the privilege be extended to the International Labor Office and Conference, as well as to the governments of the member states; both proposals were finally rejected.[22] Again, the "dispute or question" upon which the Court may give an advisory opinion must be of an international character. This is not explicitly stated, but is necessarily implied from the fact that no other questions or disputes are within the jurisdiction of the League. Third, advisory opinions are what the term implies, strictly advisory; they have moral weight but no binding validity. In view of the high authority of the Court, its opinions naturally have great weight with the Council and Assembly; in fact, all the advisory opinions thus far rendered have been requested, accepted, and acted upon by the Council.

Fourth, advisory opinions are not mentioned in the World Court Statute, but the rules of the Court lay down its general advisory procedure.[23] In brief, the question is considered in public, and the full Court deliberates thereon. Notice of the request for the opinion, which must contain an exact statement of the question upon which the opinion is requested and be accompanied by all documents likely to aid the Court in answering it, is given to members of the Court and of the League of Nations and to the states named in the Annex to the Covenant;[24] as well as to any international organizations which are likely to be able to furnish information on the question. Written opinions are filed and published, with the privilege on the part of minority judges to file dissenting opinions. Thus the procedure governing advisory opinions is in no sense of the Star Chamber kind, or such as lends itself to secrecy and abuse, but rather one of the utmost publicity. Moreover, it is essentially judicial both in form and spirit, affording all interested states and international organizations ample opportunity to appear and be heard, and to give the Court information bearing upon the question presented.

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[22] De Bustamante, *op. cit.*, 254–255.

[23] If the Statute is amended as proposed by the Committee of Jurists, the matter of advisory opinions will be fully covered by a separate chapter.

[24] That is, generally speaking, to all states entitled to appear before the Court.

Two Views of the Advisory Function

Some doubt has been expressed as to the advisability of conferring this function upon the Court.[25] It has been urged that it is not a judicial function, and therefore not appropriate for a true court of justice. The point need not be elaborated here; it may be noted, however, that such opinions have been given, and are still given, under constitutional or statutory provisions, in several of the American states, and by a number of Canadian courts.[26] The Supreme Court of the United States early declined to render advisory opinions when requested by Congress or the President.[27] On the other hand, it is defended by competent authorities, in view of the peculiar functions performed by the Council, especially in dealing with international disputes. Such disputes frequently involve important, and sometimes controlling, questions of law which must be answered before a settlement can be reached. It is deemed better in the interests of peace, and more satisfactory to the disputants, to submit such questions to an independent court of great authority, perhaps before controversy over them has become acute, than to leave them with a political body like the Council.[28]

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[25] De Bustamante, *op. cit.*, 265–266, is skeptical about its wisdom, in principle.

[26] Ogg and Ray, *Introduction to American Government* (3rd Ed., 1928), 809 and note; Hudson, *op. cit.*, 80 ff., 136 ff.

[27] Hudson, *op. cit.*, 141–142.

[28] The inability of the states signatory to the World Court Statute to accept the conditions or reservations attached by the United States Senate to American adherence to the Court, was due chiefly to the fifth reservation, or that part thereof which provides that the Court shall not " without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest." The Committee of Jurists appointed in December, 1928, by the Council of the League to consider revision of the Statute, was also enjoined to make suggestions as regards American accession to membership, and did so in its report, proposing a procedure to be followed in ascertaining the attitude of the United States concerning requests for advisory opinions. This report is now pending.

For full discussion of this subject see article by Professor P. C. Jessup in 7 *Foreign Affairs*, 585 (1929): " Mr. Root, the Senate and the World Court." For text of the Senate Resolutions, and of the World Court Protocol, see *Current History*, Vol. XXIII, 869 ff., and Quigley, *op. cit.*, Appendix V; and for the reply of the signatory states see *Current History*, Vol. XXV, 244, and Quigley, *op. cit.*, Appendix VI. The status of the United States with reference to the World Court is discussed in *W. P. F. P.*, Vol. V, No. 5, and Vol. IX, No. 8, under the title: " America and the Permanent Court of International Justice "; also in pamphlet entitled *The World Court*, published by The American Foundation, New York, the eighth edition of which came out in March, 1930, where the text of the Draft Protocol of 1929 embodying the so-called " Root Formula " prescribing a course of action as regards the United States in dealing with requests for advisory opinions may be found. This valuable pamphlet also

Thus far it seems clear that the advisory jurisdiction of the Court has been beneficent. It has been invoked wisely, and exercised in a judicial spirit. As already pointed out, its procedure is public, insures thorough consideration of the questions presented, and results in opinions which become part of the published records of the Court. Indeed, thus far the advisory opinions of the Court have been more numerous than its decisions, and it may turn out that they will play as important a part in the settlement of international disputes.[29]

Advisory Opinions Rendered by the Court

During the first eight years of its existence, roughly speaking, the Court rendered some eighteen advisory opinions and some sixteen judgments — a substantial record of achievement.[30] The advisory opinions have dealt with a variety of questions: Four have arisen in connection with the work of the International Labor Organization involving interpretations of the provisions of the Peace Treaties which established the Organization; two have concerned questions involving the rights of German minorities in Poland; three have dealt with frontier questions — the Polish-Czechoslovak frontier, the frontier between Turkey and Iraq, and the boundary between Albania and the Serb-Croat-Slovene state, the case of the Monastery of St. Naoum; two with questions arising under the convention of Lausanne between Greece and Turkey which provided for the mutual exchange of populations; two with disputes between Poland and the Free City of Danzig — one involving the Polish mail service in Danzig, the other the jurisdiction of the Danzig courts; one concerned the powers of the European Commission of the Danube on a certain sector of the Danube; one dealt with a dispute between Great Britain and France over certain so-called French nationality decrees issued in

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includes the text of the World Court Statute with the amendments proposed by the Committee of Jurists. See also *Survey of American Foreign Relations* for 1929 (Council on Foreign Relations), 333 ff.

[29] For general discussion of this subject see Hudson, *op. cit.,* 80, 136, 248, 282; Hudson, *Int. Con.,* No. 214 (1925); de Bustamante, *op. cit.,* Ch. XIV; Fachiri, *op. cit.,* 67 ff.

[30] Space forbids a detailed account of the work of the Court. Professor Hudson has reviewed its opinions and judgments each year since it was organized in successive articles published in the *American Journal of International Law.* See also his reviews in successive volumes of the *W. P. F. P.,* beginning with Volume VI. Fachiri has a good review of its work for the first four years, *op. cit.,* Ch. V. Hudson, "The Eighth Year of the Permanent Court of International Justice," *Int. Con.,* No. 259 (April, 1930), brings the record practically down to date.

French Tunis and Morocco; one interpreted a convention between Greece and Bulgaria concerning the exchange of minorities between the two countries, the particular questions referred to the Court relating to the term " communities " as used in the convention; and one answered the question whether the Free City of Danzig was legally competent to become a member of the International Labor Organization. One case, the so-called Eastern Carelia case, is interesting because it throws light upon the jurisdiction of the Court in rendering advisory opinions. In that case the conclusion of the Court was that it would not render an advisory opinion on the legal effect of treaty provisions which would be substantially equivalent to deciding the dispute between the parties, unless both submit to the Court's jurisdiction.[31]

Judgments of the Court

The judgments rendered have taken an equally wide range. Three were given in disputes between Great Britain and Greece over the so-called Mavrommatis Palestine Concessions; one interpreted the neutral rights of Germany in the Kiel Canal, under Article 380 of the Treaty of Versailles — the case of the *S. S. Wimbledon;* one involved the rights of Polish minorities in Upper Silesia, in a suit between Germany and Poland; five have dealt with German economic interests in Polish Upper Silesia; one, called the " Lotus " case, between France and Turkey, grew out of a collision between the French steamer *Lotus* and the Turkish steamer *Boz-Kourt,* which was followed by criminal proceedings against a French officer on the *Lotus;* two involved disputes between Greece and Bulgaria under the Treaty of Neuilly — the peace treaty with Bulgaria; two were rendered in suits between France on the one hand and the Serb-Croat-Slovene state and Brazil, respectively, on the other, involving certain French loans to these countries; [32] and one involved a question as to the jurisdiction of the International Commission of the Oder River, set up under the Versailles Treaty, over two navigable branches of that river.

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[31] See *W. P. F. P.,* Vol. VIII, 343–344; de Bustamante, *op. cit.,* 277; Fachiri, *op. cit.,* 156–164; Hudson, *op. cit.,* 54 ff.

[32] These judgments and advisory opinions are outlined in non-technical form in the booklet on The World Court referred to above. The earlier ones are reviewed in de Bustamante, *op. cit.,* Ch. XV. For the substance of the advisory opinion concerning the Greco-Bulgarian question of " communities " see *Monthly Summary* for July, 1930, pp. 139 ff.; and on the opinion denying the eligibility of the Free City of Danzig to membership in the International Labor Organization see *Monthly Summary* for August, 1930, pp. 157 ff.

VI. SANCTIONS BEHIND THE COURT

What sanction, or enforcing power, is there behind the decisions of the World Court? In other words, how and by whom or what are its decisions enforced? As to the need, or the propriety, of such an executive power, opinion is divided between those who hold that a true court presupposes some specific power to enforce its decisions, and those who believe that such a power, with its threat of force, would be not only useless but harmful. The advocates of definite sanctions feel that the World Court is fundamentally weakened by its lack of them, while the adherents to the latter theory insist that the only safe and effective sanction of international obligations is international public opinion.

The advocates of moral sanctions find support for their position in the history of international arbitration. As pointed out in another connection, prior to the establishment of the League of Nations, at any rate, arbitration never fortified itself with sanctions for the enforcement of its awards — save, indeed, the threat of war and other measures of redress directed by the nation accepting the award against the nation repudiating it; and yet there is hardly a case on record where a nation has refused to abide by an award against it, except for reasons which went to the validity of the award — claims of fraud, mistake, and the like.[33] On the other hand, the analogies of national government are with those who hold that law, and the agencies concerned with its administration, must in the last analysis rest upon force. Domestic courts are backed up by the armed power of the state, however that fact may be obscured by the further fact that, as regards the judiciary, the authority of the state is habitually sustained by the power of public opinion only.

But this analogy, when tested by an analysis of the stages of development attained by national and international government, in their respective spheres, and by the peculiar nature of international society, is considerably weakened. It is one thing for a state, with its overwhelming power, to array itself against individuals who defy the mandates of its courts; quite another thing, as a practical matter, for international society to hold the threat of war against one of its recalcitrant members. In the one case authority, based upon habitual respect for law, is the moral support of force and may maintain itself with a minimum amount of force; in the other, force is more palpably the physical instrument of authority, and will be apt to find occasion to exert itself until authority, strengthened by respect and a disposition to obey, is equal to the task of securing obedience with a minimum of force.[34] The question is debatable and interesting. At bottom it involves the same considerations presented by the problem of a general international executive power, on which the argument balances between the theory of prescribed physical sanctions as a last resort, and that of the moral sanction of public opinion. As a matter of fact, the decisions of the World Court are not without specific sanctions. Under the Covenant of the League, as amended since the establishment of the Court, judicial settlement and arbitration are linked together in those provisions which charge members with the obligation to resort to some method of peaceful settlement — arbitration, judicial settlement, or inquiry by the Council — before resorting to war, and to abide by the results thereof, and subject them to international sanctions, economic or military, as covenant-breaking states if they prove faithless to this obligation; but as the Covenant has been interpreted, the League may not invoke them effectively without the voluntary coöperation of member states. Thus in effect they are — or may prove to be — moral rather than physical sanctions.[35]

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[33] On this point see Ch. XVII, Sub. VIII.

VII. RELATION TO THE LEAGUE OF NATIONS

Court not Established by the League

What relation does the World Court bear to the League of Nations? What position does it hold in the system which was brought into existence by the Peace Treaties? It will conduce to an understanding of the Court as an institution if these questions are answered in some detail. In the first place, to repeat what has already been stressed, the initiative in the establishment of the Court was taken by the Council, pursuant to the mandate of the Covenant of the League. The Committee of Jurists acted as the agent of the Council, and as such reported its draft Statute to the Council. But this Statute did not become effective by force of any action of the League; it was submitted by the Council, acting under the Covenant, to the members of the League for adoption, and their ratification, each acting independently, gave it validity. The power of the

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[34] De Bustamante, *op. cit.*, 243–244.

[35] On this general subject see de Bustamante, *op. cit.*, Ch. XIII; Fachiri, *op. cit.*, 221 ff.

League was exhausted when it formulated plans for the establishment of the Court, and submitted them to the members of the League. Membership in the League does not carry membership in the Court; moreover, states non-members of the League may adhere to the Court. "The Court derives its being from no act of the Council or Assembly, or any other organ of the League." It was intended to be a World Court, not a League Court.

Election of Judges not a League Function Under the Covenant

2) In the second place, the judges of the Court are not elected by League agencies as such. True, they are chosen by the Council and the Assembly, acting independently, but in exercising this function they are electoral bodies by force of the World Court Statute, not in the discharge of any duty or power derived from the Covenant. The Council and Assembly were utilized as convenient agencies for the choice of the judges, particularly in that they afforded a solution of the problem of reconciling the conflict between the large and small states as to the composition of the Court. Moreover, once elected, the judges are quite beyond the control of the League; neither the Council nor the Assembly, singly or in coöperation, can remove, or suspend, or in any way penalize them.[36] Their tenure of office, rights, and duties can be affected only by amendment of the Court Statute, and over that matter the League has no final jurisdiction whatever.

In the Matter of Advisory Opinions

In the third place, in so far as advisory opinions are concerned, the Covenant makes the Court the agent of the Council and the Assembly. Normally the Court must respond to a request from either of these bodies for an opinion upon any dispute or question submitted to it. That it does not hold itself bound under all circumstances to tender its advice when requested is shown in its refusal to do so in the Eastern Carelia case, mentioned above. But assuming that its normal duty is to comply with requests for advisory 3) opinions, the character of its advice rests solely within its discretion, which can no more be controlled by the League than can the decisions of a domestic court by legislative or executive action. It can hardly be said that its independence is compromised by the fact that its functions may be invoked by a League body as well as by member states. Needless to say, the League plays no part in the exercise of the Court's functions in rendering judgments. The League has no standing as litigant before the Court, and cannot intervene in a pending case between member states. Under Article 40 of the Statute the Secretary-General of the League, acting for the Registrar of the Court, is required to notify the members of the League in cases brought before the Court, but this is only for purposes of information. In brief, in so far as the Court performs the ordinary functions of a judicial tribunal it is a true international Court, in no sense a League Court.

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[36] Art. 18 of the Statute provides: "A member of the Court cannot be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions."

Financial Dependence Upon the League

Finally, the World Court Statute provides that "the expenses of the Court shall be borne by the League of Nations in such manner as shall be decided by the Assembly upon the proposal of the Council." In practice the Court budget is made a separate part of the League budget, and goes through the regular budgetary channels of the League. Thus each member of the League contributes to the support of the Court an amount proportionate to its total contribution to the support of the League. In case a state not a member of the League appears before the Court, as a party litigant, it is made the duty of the Court to fix the amount such party shall contribute to its expenses. This plan of financing the Court leaves something to be desired. It was adopted, obviously, in the view that states adhering to the Court would also be members of the League, and that instead of collecting separate contributions for its support it would be simpler to let these contributions be assessed and collected by the League as a part of its budget. It has been argued that the plan is hazardous for the Court, because it is thereby made dependent for financial support upon the League, with the result that if the League should cease to function, as it might during another war, or if it should be fundamentally modified by another peace conference, the Court might share the same vicissitudes. To obviate these possibilities a permanent endowment for the Court has been proposed.[37]

That the independence of the Court in its normal operation is jeopardized by its financial dependence, or that it is thereby made a League Court in the sinister sense, is not to be assumed. The high character of its personnel is a guarantee against the evil influence of financial considerations. Indeed, if the nations really want an international Court they will safeguard its independence; for its usefulness would be at an end when once it should fall under the suspicion of League domination.[38]

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[37] De Bustamante, *op. cit.*, 174 ff. For criticism of this proposal see Pitman B. Potter, *Introduction to the Study of International Organization* (3rd. Ed., 1928), 359–360.

VIII. CHARACTER OF THE COURT

The World Court does not supercede the Hague Permanent Court of Arbitration. Lest this might be inferred, or the establishment of the new Court might prejudice the older tribunal, Article 1 of the Statute specifically declares: " This Court shall be in addition to the Court of Arbitration organized by the Conventions of the Hague of 1899 and 1907." And to make it clear that it was in no sense antagonistic to the principle of arbitration, the same article went further and declared that the new Court should be in addition to " special tribunals of arbitration to which parties are always at liberty to submit their differences." These provisions might be construed as making a definite distinction between a court of international justice and a court of international arbitration. But the general jurisdictional clause, Article 36, which opens the Court to " all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force," is susceptible of a different construction. Again, the optional clause limits the compulsory jurisdiction of the Court to " legal disputes " — questions clearly cognizable in a court of law; but the Court may also decide a case according to equity and right — *ex aequo et bono* — if the parties so agree.

Just what the true nature of the Court is, technically speaking, is not entirely clear from the foregoing provisions; nor does it matter greatly. It obviously differs from the ordinary court of arbitration in that its judges sit permanently instead of being selected by the parties to the particular case, and for that case only. That it may act as a court of equity, by consent of the parties, is expressly provided. Its jurisdiction over " all cases which the parties refer to it " would imply arbitral powers in proper cases. There is nothing inconsistent in its exercise of both the arbitral and the strictly judicial function in appropriate cases — assuming, indeed, that they are fundamentally distinct in character.[39] If the new World Court may, in proper cases, act as a tribunal of arbitration, the question might arise as to the need of continuing the older Hague Permanent Court of Arbitration. One answer would be that a case might involve peculiar issues, for the trial of which specially qualified persons not at the moment found in the World Court but available on the panel of the Hague tribunal, might be necessary. Other advantages, in particular cases, might be that the parties would prefer to choose their own judges, and that statesmen rather than jurists might be preferred in cases involving political considerations.

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[38] On the relations between the Court and the League see Fachiri, *op. cit.*, 219–220.

[39] Arbitration is supposed to admit of compromise in reaching decisions; but, on the one hand, compromise is not entirely foreign to judicial determinations, especially on questions of fact; and on the other, many arbitral decisions

IX. SOURCES OF WORLD COURT LITIGATION

The statutory jurisdiction of the World Court has been explained. In brief, it comprises all cases which the parties refer to it, and all matters specially provided for in treaties and conventions. It will be of interest to indicate the scope, present and prospective, of this jurisdiction, thus affording some idea of the rôle which the Court is likely to play in international jurisprudence.

Its jurisdiction is both voluntary and obligatory. States eligible to appear before it may agree, in specific cases as they arise, to resort to it for judicial settlement. How far they will do so depends, of course, primarily upon the Court itself — on the extent to which it inspires the confidence of governments by the exhibition of high judicial qualities. It is fair to assume that this source of jurisdiction, not being in terms limited by the character of the dispute, will steadily broaden, especially in view of the fact that the Chamber of Summary Procedure will afford an expeditious means of adjustment in cases where prompt settlement is desirable.

Already there is a growing tendency to insert in international treaties a clause providing that any dispute thereunder shall be settled by the World Court. The Statute gives no indication of the many specific sources from which disputes or questions may come up to the Court. Article 36 provides, as has been seen, for the acceptance of compulsory jurisdiction for designated classes of cases, by states so disposed. A considerable number of states have already signed the so-called optional clause, and more are likely to do so, thus gradually extending the jurisdiction of the Court thereunder.[40]

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are reached strictly on the basis of law. See on this point Hudson, *op. cit.*, 12 ff.; de Bustamante, *op. cit.*, 151 ff.

[40] Of the forty odd states which have signed, more than half of them (to be more exact, twenty-seven states up to March, 1930) have thus far made their signatures effective by ratification.

Treaty Sources of World Court Business

But beyond this, compulsory jurisdiction has been conferred upon the Court by a large number of bilateral and multilateral treaties and agreements; the list is too long to be given in full. Mention may be made of five classes of such treaties:

1. The Peace Treaties of Versailles (with Germany), of St. Germain (with Austria), of Neuilly (with Bulgaria), of Trianon (with Hungary), and of Lausanne (with Turkey) provide for resort to the Court as to a number of questions, varying in the different treaties.

2. The ten Minorities Treaties [41] give the Court jurisdiction over any questions of law or fact arising under the articles concerning racial, religious, and linguistic minorities.

3. The League mandates [42] provide for reference to the World Court of any dispute as to the interpretation or application of the provisions of the mandates which cannot be settled by negotiation.

4. A considerable number of bilateral treaties, chiefly relating to arbitration and conciliation, provide for the possible reference of disputes to the Court. The list of such treaties is steadily lengthening, nineteen having been made in the single year 1925.[43]

5. Among the multilateral treaties conferring jurisdiction upon the Court may be mentioned the following:

(1) The Paris Convention of 1919 regulating aerial navigation.

(2) The Barcelona Conventions and Statutes of 1921 on freedom of transit, and on the régime of navigable rivers of international concern.

(3) The Paris Convention of 1921 relating to the Statute of the Danube.

(4) The Portorose Agreement of 1921 on international railway traffic.

(5) The Geneva Convention of 1923 for the suppression of the circulation of and traffic in obscene publications.

(6) The Geneva Conventions and Statutes of 1923 on the international régime of railways and of maritime ports.

(7) The Geneva Convention of 1923 for the simplification of customs formalities.

(8) The Slavery Convention of 1926.

This class of conventions quite commonly provide for the submission to the World Court of all disputes arising as to the interpretation or application of the convention or statute not settled by direct negotiation or by some other peaceful method.[44]

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[41] *Ante,* Ch. XXIV.

[42] *Ante,* Ch. XXIII.

[43] See Manley O. Hudson, articles on the Permanent Court of International Justice, in *A. J.,* Vol. 20, pp. 24 ff. (Jan., 1926); same, Vol. 21, 32–33 (Jan., 1927); same, Vol. 22, 24–25 (Jan., 1928); same, Vol. 23, 25 (Jan., 1929).

[44] For a more complete reference to the treaty and other sources of the

Thus the Court bids fair to enjoy a wide and increasing jurisdiction under treaties and conventions, to say nothing of the questions and disputes referred to it by the Council or Assembly for advisory opinions, and cases submitted under special international agreements. It is reasonable to assume, also, that in so far as the present movement to codify international law is successful — especially if it be not confined to a mere restatement of the law but becomes a work of enlargement and readaptation — it will tend to broaden the jurisdiction of the World Court. The more comprehensive the field of international legal regulation, the greater the need of the international judicial function.[45]

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[45] For students who have access to the *American Journal of International Law,* it will be found valuable for reference on the World Court. In many articles and editorials since the Court was established various phases of its organization and work have been discussed.

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CHAPTER XXXV

THE INTERNATIONAL LABOR ORGANIZATION

The Versailles Peace Treaties set up two great institutions of international government — the League of Nations and the International Labor Organization, besides making provision, in the Covenant of the League, for a third, the Permanent Court of International Justice. League and Court have been discussed; it remains to consider the Labor Organization.

I. ANTECEDENTS OF THE ORGANIZATION

The Covenant of the League of Nations makes no provision for a labor organization. It does, however, pledge the members to the maintenance of some such institution or institutions in that clause of Article XXIII wherein they agree that they will

> endeavor to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations.

This pledge the Conference itself proceeded to fulfill, in part at least, by incorporating into the Peace Treaties the charter of an International Labor Organization designed to further the humane purposes set forth above.

The way for the creation of a permanent international institution to promote the welfare of the working peoples of the world had been paved by several important developments of the nineteenth century, and the first two decades of the twentieth.[1] Among these were, first, the teachings of social reformers, of whom Robert Owen (1771–1858) was one of the earliest and most prominent. Owen has been called the "pioneer of international labor legislation."[2] He insisted that the correction of many of the evils of industrialism must be found in the protection of labor by mutual agreement between the industrial countries which compete with each other in the form of international guarantees against the more glaring abuses of the capitalistic system. In 1864 the International Workingmen's Association, known as the First International, was founded. While revolutionary in its doctrines, one of its objectives was the improvement of labor conditions by international legislation. From this time on a series of congresses and conferences, notably the Berlin Conference of 1889, the Zurich and Brussels Conferences of 1897, and the Congress for Labor Legislation held in Paris in 1900, dealt with various international aspects of labor, and declared in favor of measures of protection under international agreement.

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[1] For the details see P. Périgord, *The International Labor Organization* (1926), Chs. IV, V.

[2] Périgord, *op. cit.,* 51 ff. See also B. E. Lowe, *The International Protection of Labor* (1921), 11–13. Daniel Legrand is another important name in the history of international labor legislation, Lowe, *op. cit.,* 12–13.

At the Paris Conference of 1900 the International Association for the Legal Protection of Labor was founded. This Association, through its national sections in most of the European countries, conducted an active campaign to facilitate the study of labor legislation and to promote international agreements on questions relating to conditions of labor. It organized an International Labor Office, which began to function in 1901. This office published a periodical called the *Bulletin of the International Labor Office.* Both Office and *Bulletin* were practically absorbed in 1919 by the present International Labor Organization, which publishes the *Bulletin* as the *Legislative Series.* Its most notable achievements were the promotion of international labor treaties, several of which were concluded between 1904 and 1914, and the organization of the Berne labor conferences of 1905, 1906, and 1913.[3] As will be pointed out later, the net result of these pre-war conferences was almost negligible, in point of actual legislative achievement. They did, however, serve to perpetuate the work of Owen and his followers by maintaining persistent agitation for the feasibility, and the necessity, of the international regulation of certain aspects of labor as a measure of justice to the workers of the world. Thus labor awaited an opportunity to press its demands home, and the close of the War afforded such an opportunity.

Recognition of the Rights of Labor Demanded

Throughout the War there was persistent agitation in labor circles for the recognition of the rights of labor in the peace adjustments.

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[3] Périgord, *op. cit.*, 67–71. For a full account of these international labor conferences see Lowe, *op. cit.*, Part I, Ch. III.

This took definite form in a proposal made by the American Federation of Labor at its annual meeting in Philadelphia in 1914, that a labor conference be held when and where the international peace conference should be held at the close of the War, in order to determine conditions and terms of peace and safeguard the rights of labor. This proposal failed to meet with universal approval, but everywhere throughout the allied countries there was an insistent demand for the recognition by the ultimate peace conference, not only of the sacrifices of labor to win the War, but of its rights as a matter of simple justice. Several international conferences were held during the War and after the armistice, notable among them being the congress at Leeds, in 1916.

The Leeds conference, while declining formal acceptance of the proposal of the American Federation of Labor for a world-wide congress at the same time and place as the peace conference, accepted the principle involved and declared that

> the treaty of peace which will end the present war and which will give to peoples freedom, political and economic independence, must also place beyond the reach of capitalistic competition and secure for the workers of all countries a minimum of moral and material guarantees regarding the right to work, the right to organize, regulation of imported labor, social insurances, hours of work, the health and safety of the workers.[4]

This declaration was substantially adopted by an International Conference of Labor Unions of the neutral states — Denmark, Holland, Sweden, Norway, and Switzerland — and of the Central European states — Germany, Austria-Hungary, and Bulgaria — held at Berne in October, 1918, and by the Conference of Inter-allied Socialists in London, in September, 1919. Thus it appears that the Peace Conference, in creating the International Labor Organization, acted in response to a general demand in labor circles that the Peace Treaties should recognize and conserve the interests of labor by setting up some sort of permanent agency for that purpose.

Pursuant to a resolution taken by the Conference on the Preliminaries of Peace, on January 25, 1919, a Commission was appointed,

> to inquire into the conditions of employment from the international aspect, and to consider the international means necessary to secure common action on matters affecting conditions of employment, and to recommend the form of a permanent agency to continue such inquiry and consideration in co-operation with and under the direction of the League of Nations.[5]

[4] Quoted in Périgord, *op. cit.*, 78.

[5] Quoted in Périgord, *op. cit.*, 82.

The report of this Commission was made up of two parts, the first a draft convention for the establishment of a permanent international labor organization, and the second a declaration of principles to be incorporated into the Peace Treaties. This report was duly presented at a plenary session of the Peace Conference on April 11, 1919, and accepted as amended a few days later.[6] The scheme proposed by the Commission was incorporated into the Peace Treaties as an integral part thereof.[7]

II. MEMBERSHIP AND AGENCIES OF CONTROL

In one respect the constitution of the International Labor Organization resembles that of the League of Nations. Its machinery is similar. Corresponding to the Assembly of the League is the General Conference of the International Labor Organization. The Council of the League has its counterpart, generally speaking, in the Governing Body of the Labor Organization, while the League Secretariat and the International Labor Office perform analogous functions for their respective organizations.

In another respect the two organizations differ radically. The League is made up of states whose representatives in Assembly and Council act, not on their individual initiative and in the exercise of their personal judgment, but strictly as the delegates of their respective states, the members of each delegation together casting the vote of their state. The Labor Organization, on the other hand, recognizes the right of the labor and employee groups, equally with the governments of the member states, to representation in the Organization. This feature is one of the most distinctive contributions of the Peace Conference to international government.[8]

All members of the League of Nations are *ipso facto* members of the International Labor Organization. It is as broadly international, therefore, as the League. Before their admission to the League, in 1926, Germany and Austria were admitted to membership, in view of their willingness to coöperate in the work of the Organization.[9] The only two states of major importance not now members are the United States and Russia.[10]

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[6] For the text of this remarkable declaration of principles as presented by Samuel Gompers, delegate from the United States and President of the Commission, see Périgord, *op. cit.*, 87–88; and for the full report of the Commission see *Int. Con.*, No. 140 (July, 1919).

[7] The text of the Labor Part of the Peace Treaties is printed in Appendix D.

[8] G. A. Johnson, *International Social Progress; Work of the International Labor Organization* (1924), refers to it as "a constitutional innovation of the first importance."

General Conference — Membership and Procedure

The General Conference, which meets annually, is made up of four delegates from each member state, two of them representing its government, one its employer group, and one its workers. The employer and worker delegates, and their advisers,[11] are nominated by the members, "in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or work people, as the case may be, in their respective countries."[12] Thus a complete delegation consists of four members — two government delegates and one each from the employer and employee groups within the state. Obviously the representative character of the Conference, and the value of its work, depend materially upon the completeness of the various delegations. It may happen that a government will send one instead of two delegates; again, the employer and employee groups of a member state, one or both of them, may not see fit to be represented in a Conference. So also, there may be no representative industrial organizations in a state to consult with the government in nominating industrial delegates.[13] At the Conference of 1929 fifty out of the fifty-five members of the Organization were represented, in part or fully — the largest number thus far recorded; and no Conference has fallen below a majority representation.

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[9] This action was taken at the first General Conference held at Washington, in 1919. Organization officials state that the cases of Germany and Austria are hardly precedents on the question whether a state not a member of the League may be a member of the Labor Organization. Brazil, although no longer a member of the League, had a complete delegation at the 1929 Labor Conference. On this and other questions as to membership see C. Howard-Ellis, *The Origin, Structure and Working of the League of Nations* (1928), 234.

[10] For comment on the membership of the organization see *W. P. F. P.*, Vol. XI, Nos. 4 and 5, pp. 33 ff.

[11] Each delegate may be accompanied by advisers, not exceeding two in number for each item of the agenda; and when questions especially concerning women are to be considered, one at least of the advisers should be a woman. *Peace Treaty, Art. 389.*

[12] This provision is rather vague, and has occasioned some trouble in practice. The first advisory opinion given by the World Court was as to whether a Dutch labor delegate to the Conference had been chosen in accordance with this procedure.

[13] For table showing the number of complete and incomplete delegations at the various Conferences down to and including 1928 see *W. P. F. P.*, Vol. XI, Nos. 4 and 5, p. 46. It is said that this provision as to the nominating functions of employer and employee organizations has promoted the formation of such organizations. Périgord, *op. cit.*, 113.

As already stated, every delegate is entitled to vote individually on all matters acted upon by the Conference. To guard against the inequitable contingency that might arise in case a member state fails to nominate one of the non-government delegates to which it is entitled, it is provided that in such case the other non-government delegate shall be allowed to sit and speak at the Conference, but not to vote. The same rule applies if the Conference refuses admission to a delegate of one of the members.

Provision is made for meetings of the General Conference from time to time, as occasion may require, and at least once every year, at the seat of the League of Nations. The first Conference was held in Washington, in 1919; and the second the following year in Genoa; since that time it has met annually in Geneva.

Its agenda is prepared by the International Labor Office, which must, however, consider any suggestion as to the agenda that may be made by the government of any member, or by any representative organization recognized in connection with the appointment of delegates. The Conference is authorized to determine whether its action with regard to items on the agenda shall take the form: (a) of a recommendation to be submitted to the members for consideration with a view to effect being given to it by national legislation or otherwise, or (b) of a draft international convention for ratification by the members. The former procedure contemplates concurrent national legislation, the latter collective international action. In practice the work of the Conference takes both forms. Except as otherwise expressly provided in the labor sections of the Treaties, all matters are decided by a simple majority of the votes cast by the delegates present; but to adopt a recommendation looking to national legislation, or an international convention, a two-thirds majority of the votes cast by the delegates present is necessary. Even the latter requirement is in striking contrast with the unanimity rule of the League of Nations.

International Labor Office — Governing Board

The Internatinonal Labor Office, which is the administrative agency of the Organization, is under the control of a Governing Body of twenty-four members, of whom twelve represent the governments of the member states, six the employers, and six the workers. Of the twelve representing the governments, eight are nominated by the members of chief industrial importance, and four by the members selected for the purpose by the government delegates to the Conference, excluding the delegates of the eight members mentioned above. At the first Conference in Washington, in 1919, the states of chief industrial importance were designated as Belgium, France, Germany, Great Britain, Italy, Japan, Switzerland, and the United States. Pending ratification of the treaty the place of the United States was taken by Denmark. As might have been expected, the selection of this group raised vigorous protest on the part of several states, which took exception to the list of states of greatest industrial importance. The upshot of it was that the criteria by which to test the industrial importance of states were fixed by a mixed Committee appointed in 1920.[14] In view of this controversy the Conference voted, in 1923, to amend the provisions of Article 393 so as to provide for thirty-two instead of twenty-four members, of whom one-half would represent governments, eight to be appointed by the states of greatest industrial importance, as before, and eight (instead of four) to be chosen by the other member states. Of the sixteen members represented, six must be non-European states.[15] The members of the Governing ~~Body serve for three years.~~

The duties of the International Labor Office, the Secretariat of the Organization, are detailed in the Treaties, mainly in Article 396, which prescribes that its functions shall include, in addition to such as may be assigned to it from time to time by the Conference or the Governing Board,

> the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labor, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.[16]

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[14] The factors taken into consideration are: total industrial production, proportion of industrial population to whole population, total horse-power per capita of population (not including locomotives and vessels), total mileage of railways, length of railways in proportion to territory, development of the merchant marine. Canada and India have now taken the places of Switzerland and the United States in the original classification.

[15] This amendment has not gone into effect as yet, but is quite likely to be ratified by the requisite number of states — all the states whose representatives compose the Council of the League of Nations, and by three-fourths of the Members. Art. 422. See Appendix D, note to Art. 393.

[16] Obviously this Office is to be classed with the international bureaus described in Ch. XIII, whose main function is to collect information and make it available as a basis for international action.

The Labor Office — Internal Organization

The Treaties provide for a Director of the International Labor Office, appointed by the Governing Board. His duties are analogous to those of the Secretary-General of the League, and include the appointment of the staff of the Office, his discretion in making selections being limited by the provision that he shall " so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities." The Director is required to submit to each annual Conference a comprehensive review of the work of the Organization for the last preceding calendar year. M. Albert Thomas has been Director since the organization of the Office.

The Labor Organization, like the League, has found it necessary to enlist the aid of several committees of experts to study particular questions, among them being the Joint Maritime Commission on labor conditions at sea, the Commission on Unemployment, the Committees on Social Insurance and Industrial Hygiene and Safety, and the Committee on Native Labor. So also, the Organization coöperates with several League committees, notably the Mandates Commission, the Economic and Financial Committees, the Committee on Intellectual Coöperation, and the Health Organization.

The Labor Office is organized in three main divisions: (1) The Diplomatic Division, which maintains contact with governments, prepares agreements to be submitted to the Conference, and assumes responsibility for the secretarial work connected with the Conference, the Governing Body, and the Committees; (2) the Intelligence and Liaison Division, which keeps in touch with organizations of workers and employers, with coöperative societies, and with institutions for the study of particular problems, thus insuring contact with tendencies in social development and international public opinion; (3) the Research Division, which undertakes inquiries into conditions of life and labor in the working world, thus serving as a sort of research laboratory on industrial questions. These Divisions are subdivided into numerous sections to which special duties are assigned. The staff of the office numbers nearly 400 employees representing some thirty-five nationalities. This labor Secretariat is housed in a new building first occupied in 1926. The Office keeps in touch with the industrial countries through national correspondence offices established in Berlin, London, Paris, Rome, Tokio, Washington, and Delhi. In addition to these channels of communication, a number of countries have permanent social attachés in

Geneva to enable them to keep in constant contact with the work of the International Labor Office.[17]

Though quite independent in the normal exercise of its functions, in one important respect the International Labor Organization is entirely dependent upon the League of Nations. It has no independent income, but must look to the League to meet its financial requirements. Its budget, like that of the Permanent Court of International Justice, is included in the general budget of the League, and may not be discussed by the Conference. This is not a serious element of weakness, however, inasmuch as the membership of the two organizations is the same. The administration of the Organization is entirely controlled by the Governing Body appointed by the Conference.

III. How the Organization Functions

Labor Legislation Before the War

It has already appeared that international legislation dealing with labor conditions had been advocated long before the establishment of the International Labor Organization, and that the International Association for the Legal Protection of Labor had been founded in 1900 to promote such legislation. This Association, organized in national sections and enrolling a wide and influential membership, did substantial work. Besides creating an International Labor Office as its central executive organ, it promoted the adoption of bilateral international conventions for the protection of labor. The first important convention of this kind, between France and Italy, was signed in 1904. It dealt with such matters as factory inspection, workingmen's insurance, protection of workmen in industry, free transfer from one country to the other of the savings of working people, and the extension to the nationals of each country working in the other of the protection of national labor legislation. This was followed during the next decade by a considerable number of similar treaties between the leading industrial nations of Europe.[18] The Association also organized the Berne Conferences of 1905, 1906, and 1913. The Conference of 1905 drafted two agreements to be submitted to the several governments for ratification: One prohibiting the importation into the respective countries of white phosphorus for the manufacture of matches; the other forbidding the night-work of women in industry.

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[17] On the internal administration of the Labor Office see E. B. Behrens, *The International Labour Office* (1924), Ch. II.

[18] R. L. Buell, *International Relations* (Rev. Ed., 1929), 159; Lowe, *op. cit.*, 137 ff.; Périgord, *op. cit.*, 67 ff.

To secure the ratification of these proposals the Conference of 1906 was called. Fourteen states were represented; all of them signed the convention regarding women's work, and seven that on phosphorus. The Berne Conference of 1913 was called by Switzerland to consider proposals submitted by the Association to prohibit entirely night work by young persons, and to establish a ten-hour day for women and young people. Fifteen nations attended; conventions were drafted, and a conference called for September, 1914. This conference was never held on account of the war.[19] Such was the situation as regards international labor legislation when the International Labor Organization came into existence under the Versailles Treaty. The definite results of a century of agitation and organized effort were obviously meager; nevertheless, they demonstrated that the protection of labor by international agreement was measurably practicable, and a legitimate interest of the modern industrial state.

Fundamental Aims of the Organization

The constitution of the International Labor Organization, appearing in the Peace Treaties as Part XIII, states succinctly the considerations of public policy underlying the regulation of conditions of labor by international action. They involve three essential propositions:

1. Universal peace, the avowed object of the League of Nations, can be established only if based upon social justice.

2. Social justice is denied to large numbers of people by working conditions involving hardship and privation, the improvement of which is urgently required; as for example,

> by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labor supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provisions for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of

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[19] Lowe, *op. cit.*, has a collection of international labor treaties and labor laws internationally adopted. His earlier work, *International Aspects of the Labor Problem* (1918), gives a detailed review of international labor treaties up to the War.

the principle of freedom of association, the organization of vocational and technical education, and other measures.[20]

3. These conditions can be dealt with effectively only by common international action, because " the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve conditions in their own countries."

To promote the objects set forth in the preamble to the Labor Sections of the Treaties, the International Labor Organization was established. Its machinery, which has already been outlined, was formally set in motion at the first meeting of the Conference held in Washington in 1919, where standing orders were adopted working out the details of conference procedure.[21] The Conference is the legislative agency of the Organization. It organizes at its annual meetings by the election of a president, and of three vice-presidents, one being nominated by each of the groups of delegates — government, worker, and employer. The Director of the International Labor Organization acts as Secretary-General of the Conference, and is responsible for the Secretariat, consisting of officials of the Office in attendance upon the Conference. Like ordinary legislative bodies the Conference works through committees, the membership of which is determined by a committee of selection. The important and difficult matter of deciding upon the agenda for the meetings of the Conference is regulated by the Treaties. It is settled by the Governing Body and transmitted by the Director to the members four months before the meeting of the Conference. Any member may formally object to the inclusion of any item or items on the agenda, but such objections may be overruled by a two-thirds vote of the delegates present.

Drafting the Plan of the Conference — Two Problems

The Commission which drafted the plan of the International Labor Organization struggled with two knotty problems which throw interesting light upon the difficulties attending this international labor movement. One was the determination of the relative voting power of the government and non-government groups in the Conference. Specifically the question was whether the workers should be given representation equal to that of the governments and employers combined, or should be placed on a parity with the employers, the two groups combined to have representation equal to that of the governments. Samuel Gompers, an American delegate and president of the Commission, insisted that the workers would be at a disadvantage, and would therefore distrust the organization, if they were not given voting power equal to that of the combined government and employer groups. His position was based upon the theory that the governments and employers would too commonly join hands and outvote labor. Plausible as this argument would seem from the labor standpoint, it does not appear to have been borne out by experience, on the whole.[22] Obviously the hazard of imperilling the usefulness of the Conference pointed out by Mr. Gompers exists under the plan of representation finally adopted, because under the party system the attitude of governments on labor questions vacillates within wide limits. On the other hand, it was obvious that, whatever basis of representation in the Conference was adopted, if the governments were hostile to its proposals they must fail, because the ultimate power of ratification rested with the governments.

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[20] Preamble to the Labor Part of the Versailles Treaty.

[21] Printed in full in *Appendix* II to Périgord, *op. cit.*, 292 ff.

It must be borne in mind that the concession to the labor and employer groups, as such, of representation in an international organization of the character proposed, was itself without precedent, regardless of the power conferred upon such representatives. Regarding it Professor James T. Shotwell has said:

> For the first time in the history of international law it was proposed to permit unofficial delegates, mere citizens of different countries representing home interests in capital and labor, to vote with similar representative citizens of other countries, independently of the action of the representatives of their governments, and so help actually to bind those governments towards certain international policies and treaties.[23]

The matter of the scope of the functions to be conferred upon the Conference raised another and more fundamental question with which the Commission had to deal, namely: Was the Conference to be merely diplomatic — that is, to have the power of proposal only, thus functioning like the typical international congress? Or should it be endowed with the plenary power of law-making? The British draft convention, which was the basis of discussion, adopted a modification of the latter theory. It provided that when the Conference had approved any proposals as to an item on the agenda, such proposals should be embodied in an international convention; that if the convention received the support of two-thirds of the votes cast, it should be held to be adopted by the Conference; and that each of the members should undertake, within one year from the adjournment of the Conference, to communicate its formal ratification of the convention to the Director, and forthwith take all the steps necessary to put it into effect, " unless such convention is disapproved by its legislature."

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[22] See Périgord, *op. cit.*, 89 and Appendix III.

[23] In one of a series of papers edited by E. J. Solano (1920), 50.

Enactment of Labor Legislation

An even more drastic proposal was made — namely, that the decisions of the Conference would automatically have the force of law after one year. Happily both of these proposals were finally defeated, under the vigorous opposition of the American delegation. It is reasonably certain that either would have been rejected by the Peace Conference, the former as tending to constitute the Conference a super-parliament, the latter as actually doing so. After prolonged debate the Commission adopted the provisions ultimately incorporated into the Treaties. In substance they are as follows:

1. Proposals of legislation agreed upon by the Conference may, at its option, take the form either of a recommendation to be submitted to the member states with a view to its being given effect by national legislation or otherwise; or of a draft convention for ratification by the member states. A two-thirds majority of the votes cast by the delegates present shall be necessary for the adoption of either recommendation or convention.

2. Each member undertakes that it will, within a maximum period of eighteen months after the closing of the session of the Conference, bring the recommendation or draft convention before the authorities within whose competence the matter lies, for the enactment of legislation or other action. If no such action shall be taken, the member shall be deemed to have discharged its obligation under the Treaties.

3. In case of a federal state, limited in its power to enter into conventions on labor matters, its government may treat a draft convention as a recommendation only.

4. Conventions when ratified are registered by the Secretary-General of the League of Nations, but are binding only upon the members which ratify.

The provision above noted with reference to federal states grew out of the general discussion of the powers to be conferred upon the

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Conference, and was inserted on motion of the American delegates, who were naturally impressed by the limitations upon the power of their national government to enter the field of labor legislation, which lies chiefly within the province of the states. To empower the Conference to adopt, perhaps with the concurrence of the American delegates therein, a draft convention which their government had no constitutional power to ratify would be, they felt, to place upon it in some sense a moral obligation which it could not possibly meet, and thus to imperil the coöperation of the United States, and that of other states in like situation.

The United States could, however, accept recommendations in good faith, and do its utmost, through its own action or that of the states, to see that they were complied with. For example, while the federal government had no right to forbid the use of white phosphorus in the manufacture of matches, it could and did conform to the international labor convention of 1916 relating to phosphorus by forbidding the importation of matches so manufactured, and placing a prohibitive tax upon such matches.[24]

Such, then, is the legislative power and procedure of the International Labor Conference. In effect it can only initiate and recommend; it has no power to bind a member state to any action beyond that of bringing its proposals before the duly constituted authorities of the state within a prescribed time. That having been done, all legal and moral obligations have been discharged. It cannot be too strongly emphasized that the provision whereby the Conference may adopt recommendations or draft conventions by a two-thirds majority is a distinct innovation in procedure at international conferences, and a real concession to the sentiment in the Commission favoring a more powerful Conference. In this respect the Conference is far more competent to reach affirmative conclusions than are the Assembly and Council of the League, where the unanimity rule is imposed.

Follow-Up Work of the Labor Office

Two other features of the legislative functions of the International Labor Organization remain to be considered: The provisions intended to promote the adoption of the proposals of the Conference — follow-up work, it might be termed; and the measures to be taken to enforce compliance with such proposals, once they have been adopted by a state.

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[24] To obviate the difficulty involved in our federal system the patently unsound proposal was made to place the American States on a basis of equality with the British Dominions. Périgord, *op. cit.*, 103.

1. Earlier experience had shown that it was far easier for a conference, however fully representative, to agree upon a piece of international labor legislation, than to secure its adoption by governmental action. Not only were technical objections apt to be freely raised by the home authorities, but governmental inertia or the proverbial red tape of legislative procedure often blocked any consideration whatever of the measures proposed. This difficulty could not be eliminated, but it was recognized and guarded against so far as possible. It has already appeared that each member is pledged to see to it that draft conventions and recommendations shall be brought before its competent authorities within eighteen months after the closing of the session of the Conference — within a year, in fact, unless it is impossible to do so because of exceptional circumstances. Thus it is made reasonably certain that the proposals will not be pigeon-holed out of hand. Moreover, the performance of this initial duty is stimulated somewhat by the further provision that, in case of a recommendation, the member will inform the Secretary-General of the League of the action taken.

In fact the Director of the Labor Office is exceedingly vigilant in holding the members up to their obligation to consider the proposals of the Conference, and in promoting their adoption. It is the duty of the Office, as the Secretariat of the Organization, to keep informed as to all such matters, and thus to enable the Director to act with full knowledge of the situation. But even with the utmost vigilance governments act tardily, as will appear from a review of the legislative work of the Organization. The most that can be said is that the difficulties involved are recognized, and so far as possible minimized. In the long run it should be able to secure better consideration of its measures than were the earlier Conferences, which had no competent executive machinery that functioned after their adjournment.

Sanction

Measures to Enforce Labor Legislation

2. The problem of securing compliance by a member with draft conventions or recommendations once adopted, presents similar difficulties. A check upon recalcitrant states is afforded by Article 408 of the constitution of the Organization, which provides that each of the members shall make an annual report to the Office on the measures which it has taken to give effect to the conventions to

resp to Labor Office → Gov Body

which it is a party, and that the Director shall lay a summary of these reports before the next meeting of the Conference.

But reliance upon publicity alone was not deemed a sufficient sanction. Any member may complain to the Office if satisfied that some other member is not effectively observing a convention which both have ratified. The Governing Board, in its discretion, may communicate the complaint to the government against which it is made. If it does not do so, or if, having done so no statement in reply has been received within a reasonable time which the Governing Board deems satisfactory, it may apply for a Commission of Inquiry of three, to be appointed by the Secretary-General from a panel nominated by the several members of the Organization. This Commission is to consider the complaint and report its findings of fact, with such recommendations as it may deem proper as to the steps to be taken to meet the complaint. An appeal lies from the recommendations of the Commission to the Permanent Court of International Justice, whose decision, which is final, may affirm, vary, or reverse any of the findings or recommendations of the Commission, and may indicate measures of an economic character deemed appropriate for adoption against a defaulting government.

This procedure applies only as between governments; but it might appear to an industrial association of workers or employers that a member was shirking its duty under a convention to which it had become a party. In that event there would be no redress unless the association could persuade its government to act in the matter. This contingency is rather inadequately provided for. By Article 409 the association may file its complaint with the International Labor Office, and the Governing Board may communicate it to the government complained against, and invite it to make a statement on the subject. If no such statement is received within a reasonable time, or if one is received but is deemed unsatisfactory to the Governing Board, it shall have a right to publish the representation, and the statement, if any, made in reply to it.

This rather elaborate machinery to enforce international labor conventions has never been tried out; its success, if actually put to the test, may be doubtful. But whatever its actual coercive power, it would accomplish one thing of undoubted value: It would bring the force of public opinion to bear upon a defaulting government, and put it definitely on the defensive. For a government to have its policies, and even its good faith, made a subject of public complaint, and perhaps of international inquiry, with the probability, or at least the possibility, that it would be made a matter of debate in the annual Conference, would be embarrassing, to say the least. As a matter of fact, the value of publicity in industrial disputes has several times been demonstrated, in cases where impartial investigation by the International Labor Office concerning conditions of labor in particular industries, or concerning restrictions upon freedom of association, have resulted in national action remedying the situations complained of. Industrial evils often exist through public ignorance or inertia rather than by deliberate intent; complaints concerning them may be so frequently reiterated as to go unheeded by the public. The existence of an able, impartial group of officials in the Labor Office makes it possible, in proper cases, to bring the unbiassed facts underlying a dispute, or a complaint, to the bar of public opinion.[25]

IV. LEGISLATIVE WORK OF THE ORGANIZATION

Turning now to the work of the International Labor Organization, a summary statement must suffice. During the eleven years of its existence it has adopted some thirty conventions and recommendations. These measures have related to a variety of subjects, and have been of varying importance. A number of them have concerned working conditions, the most fundamental piece of legislation in this field being the so-called eight-hour day convention approved at the Washington Conference of 1919.[26] The same Conference recommended to the member states their adherence to the international convention signed at Berne in 1906 prohibiting the use of white phosphorus in the manufacture of matches. Another convention deals with the use of white lead in painting with a view to the prevention of poisoning.

Measures for the Protection of Workers

The promotion of social insurance has been the avowed aim of several conventions and recommendations, relating to such subjects as workmen's compensation for accidents in industry and agriculture, occupational diseases, and sickness insurance. Various aspects of employment have been dealt with, such as vocational education in agriculture, unemployment, employment for seamen, and certain problems raised by the steady migration of workers in large numbers, as being closely related to the problem of unemployment.[27]

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[25] Behrens, *op. cit.*, 38–39.

[26] This convention has come into force, but has failed of ratification by some of the industrially important countries.

Numerous measures for the protection of women and children have been adopted, as for example, those limiting hours of labor, prescribing the minimum age of children for admission to industrial employment, protecting maternity, and dealing with various aspects of night work. So also, considerable attention has been given to industrial hygiene, safeguards for workers in dangerous employments, factory inspection, the welfare of agricultural workers, reciprocity as between member states in respect to protection under labor laws, the right of association, and equality of treatment for national and foreign workers regarding workmen's compensation for accidents. An important recommendation adopted by the 1929 Conference concerned the question of industrial accidents, a matter of vital interest to workers which was exhaustively debated in the 1928 Conference. It is in four parts, the first relating to the problem of inquiry into the causes of accidents and the methods of preventing them; the second to the part to be played by the state, the employers, and the workers in accident prevention, with suggestions as to the methods which may be adopted for that purpose; the third principally to the legal obligations imposed on employers and workers for the purpose of preventing accidents; and the fourth to suggestions concerning insurance companies as a factor in accident prevention. Two other questions were discussed by this Conference, but without final action — that of forced labor and that of hours of work for salaried employees.[28]

The thirteenth session of the Conference, held in October, 1929, dealt exclusively with maritime questions such as hours of work on shipboard, liability of shipowners with respect to sick or injured seamen, sickness insurance for seamen, and the promotion of seamen's welfare in ports. The Tenth Assembly of the League suggested that the International Labor Organization should investigate the question of work in coal mines, to that end convening a special preparatory conference to study it, with a view to the adoption of an international convention dealing with the whole subject.

These measures proposed by the International Labor Conference have no legal validity, of course, without favorable action on the part of the governments of the member states, by the enactment of laws in the case of recommendations, and by the ratification of conventions when the work of the Conference takes that form. The formal accomplishments of the Organization, therefore, are to be sought in the number of ratifications secured for its conventions, and the extent to which its recommendations have been made effective. Up to July 31, 1930, the total number of ratifications of labor conventions registered with the Secretary-General of the League of Nations was 403, including nine conditional ratifications.[29] Bearing in mind that a single multilateral convention is an agreement of each ratifying state with every other, and therefore the equivalent of a number of bilateral treaties, it will appear that the labor conventions now in force are the equivalent of many hundreds of bilateral agreements.[30]

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[27] On the international aspects of immigration see Buell, *op. cit.*, 169 ff.

[28] The Conference follows what is called double discussion procedure — that is, a subject must be discussed twice at successive Conferences before final action. This gives opportunity for full consideration in the member countries between Conferences, and for eliciting the views of governments on the basis of questionnaires.

But the measure of the usefulness of the Organization is not to be sought alone in the extent to which its proposals have been adopted. Its influence upon social legislation in general has been appreciable, apart from the immediate scope and effect of its own action. The annual Conferences are great clearing houses of information, and formulators of opinion, on a wide variety of industrial subjects. Measures to alleviate labor conditions in any member state may be played up in debate with wholesome effect upon other states represented in the Conference. "Any backward step on the part of a state belonging to this organization would at once become subjected to the inquiry of other states."[31] In brief, as the same writer puts it, "an international conscience concerning social conditions is gradually being built up" by the work of this Organization — a result difficult to measure but of undoubted value.

The Office a Center of Industrial Research

Nor is the work of the International Labor Organization merely legislative; it is at the same time informative. As already stated, the main function of the International Labor Office is the collection and distribution of information relating to the international aspects of industry. This information is primarily intended to afford a basis for legislative action, to be sure, but it has become of great educational and scientific value apart from any use made of it by the Conference. It is available to the industrial organizations of the member states, and is freely drawn upon by their governments as well in dealing with national industrial problems.[32]

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[29] *Monthly Summary International Labor Organization* for June, 1930, p. 41.

[30] For a Summary of the action taken on labor conventions and recommendations for the first ten years, including ratifications of international engagements and national legislative action with respect to recommendations, see *Record of the International Labor Organization for 1919–1928, W. P. F. P.*, Vol. XI, Nos. 4 and 5, 102–103. Périgord, *op. cit.*, covers the record up to 1926, in Ch. VII.

[31] Buell, *op. cit.*, 168.

The Office has become an international center of industrial research. Its wide international connections enable it to do this work better than any national or private agency could do it, and its expert handling of the material accumulated render it doubly valuable for legislative or reference purposes. As was suggested with regard to the utility of the information-gathering bureaus in their respective fields, the new scientific method of approach to industrial problems, which demands full and accurate statistical data as an indispensable basis of generalization, greatly enhances the value of the systematically assembled material furnished by the International Labor Office.[33] The Office has become a clearing house of information on the subjects to which its work relates. In 1927, for example, it received 920 requests for information from the various governments, some of them involving long and minute inquiries, and the assembling of much original information. Many governments avail themselves of this information in connection with the drafting of labor legislation.[34]

Publications of the Labor Office

Its special studies take the form of monographs, of which a large number have been published. So also, it supplies the need of current information in its field through several regular publications: The *International Labor Review*, a monthly devoted to special articles and statistical information of interest to employers, workers, and governments; a weekly *Official Bulletin* devoted to the work of the Office, and another weekly publication, *Industrial and Labor Information*, which gives notes on events of current interest. In the statistical field it publishes the *International Labor Directory* and an *Encyclopedia of Industrial Hygiene*. Other important publications of the Office are the *Legislative Series* covering all the labor legislation adopted in the several states, an *International Survey of Legal Decisions on Labor Law*, the *Industrial Safety Review*, and the *Monthly Record of Migration*.

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[32] Even the governments of non-member states avail themselves of the special studies made by the Office.

[33] See above, Ch. XIII. On this activity of the Office see a full discussion by Behrens, *op. cit.*, Ch. VIII.

[34] *World Peace Foundation Record, cited above,* 85–87. The United States, a non-member, submitted forty-three such requests in 1926.

One other useful function of the office already noted should be emphasized — its work in supervising the enforcement of labor treaties. It is one thing — often difficult enough — to draft a convention, another to secure its ratification, and still another to enforce responsibility for its observance once it has been ratified. Governments are often lax in putting through the legislation necessary to enforce a treaty, for one reason or another — changes of government, the exigencies of politics, or half-hearted interest in the project. Again, they may be content to conform to the letter of the treaty, ignoring its spirit. This was found to be a weakness of the earlier international statutes; the task of watching over their enforcement, being everybody's business, was nobody's business. The follow-up work of the Office is of great importance. It receives reports annually from each member state as to the steps taken to comply with the conventions to which it has become a party. The Director and other officials of the Office keep in personal touch with conditions demanding attention by way of advice or direction. Formal complaints as to the non-observance of conventions take a course prescribed by the Treaties, elsewhere described; but the Office takes note of informal representations and uses its influence to remove any grievances that may exist.[35]

V. VALUE OF THE ORGANIZATION

Has this elaborate Organization justified itself by its achievements? The answer depends upon the point of view taken as to international labor legislation in general, and the tests of value applied to its legislative output. The whole movement has its critics, those who maintain that the attempt to legislate internationally in the labor field is futile, or that to the extent to which it succeeds it is dangerous because it constitutes an invasion of the exclusive legislative sphere of the state — an impairment of its sovereignty. Of course the advocates of the economic doctrine of *laissez-faire* within the state are equally committed to it when the industrial regulation proposed is international.

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[35] *The World Peace Foundation Record* referred to above gives a full account of the organization and work (1919–1928) of the International Labor Organization.

On the other side stand those who stress the solidarity of industry in the modern world, and the necessity of industrial justice. They argue that modern competitive conditions necessitate international action on some of the major evils of industrialism if they are to be dealt with effectively. Industrial states will not ordinarily hazard their advantage in the markets of the world by adopting labor policies, however just and humane, which will prejudice them in the competition for trade. Thus moral considerations are inevitably forced to yield to economic, the Golden Rule to the balance of trade, without coöperative action in dealing with labor conditions having an international aspect.[36]

This may be a debatable issue in point of theory; it cannot be pursued here without extending this topic unduly. It cannot be denied that the facts of modern international life — the economic interdependence of nations, the sense of class unity, more or less cutting across state lines, made possible by the quickened means of communication, and a keener and more general feeling of moral responsibility for conditions of human well-being — have developed novel and important labor problems which no single nation is competent to solve, even for itself. Opinions may differ as to the machinery and methods best adapted to this new field of economics and politics; that it exists is patent.

It would be easy to criticize the International Labor Organization, alike in point of mechanism and method, and to minimize its achievements. The fact remains that it is actually dealing with these new labor and industrial problems, and with some success, the measure of which, indeed, will depend in the long run, not so much upon the precise structure of the Organization as upon the whole-hearted support accorded it by its members. By itself it can do little but propose; it remains for the states themselves to dispose. It can be said confidently that it is organized on sound general principles, and animated by a genuine spirit of internationalism.

Promotion of Industrial Justice and International Peace

Even if it fails to write much legislation into the statute book of the nations, it is promoting a sense of industrial justice, and this is one of its chief purposes. It is a great gain for industry to afford employers and workers a platform on which to discuss their mutual relations face to face, to present their relative points of view, and thus to gain some appreciation of the difficulties involved in adjustments which each group might otherwise deem easy of attainment. This the Labor Conference does with conspicuous success. On the whole its deliberations are characterized by candor and mutual consideration. Sharp differences of view necessarily develop, but they do not ordinarily proceed beyond the limits of fair debate; indeed, observers at its sessions are struck by the spirit of good will commonly manifested on the floor.

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[36] See Périgord, *op. cit.*, Ch. III, on "The Philosophy of Labor Legislation"; also Lowe, *op. cit.*, Part I, Ch. IV, where the arguments for and against this type of international action are reviewed.

Finally, the broader purpose of the Organization must not be overlooked. Whatever selfish class motives may have furthered the movement for it, the Peace Conference saw in it a means of advancing the cause of international peace. The preamble of the labor constitution in the Peace Treaties justifies this new international institution, not merely on grounds of sentiment, or of economics, but as an agency in promoting the peace of the world. In a very real sense, as the preamble states, the peace and harmony of the nations are imperilled by conditions of labor involving injustice, hardship, and privation for large numbers of people. To contribute to the amelioration of these conditions the International Labor Organization functions, in the industrial field, side by side with the League of Nations in the political, commercial, and humanitarian fields. It appears to have won a permanent place in international government; at any rate, it is safe to say that its aims and purposes will continue to claim the attention of the enlightened governments of the world.

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APPENDICES

APPENDIX A

Bibliographical Note

As suggested in the Preface, the writer has not undertaken to prepare a bibliography on the subject of which this book treats, and for two main reasons: First, a comprehensive list of references to the material covering so broad a field would itself assume the proportions of a book and prove so voluminous as to be of little value to the readers of a text of this character; and second, a number of quite complete bibliographies, covering the more specialized branches of the general subject of international relations, are already available to readers having access to fairly well-equipped libraries.

Among these bibliographies may be mentioned that of Professor Parker Thomas Moon in his *Syllabus on International Relations* published in 1925 — a work valuable not only for its bibliography but as an analytical guide to the study of international relations. The revised Edition of Professor Raymond Leslie Buell's book on *International Relations* recently published (1929) contains the extended and well classified bibliography which accompanied the first (1925) edition, and a supplementary list of material appearing in the period 1925–1929. Professor Pitman B. Potter has included in Appendix B of this book on *International Organization* (3rd Ed., 1928) a well-selected bibliography. In his thoroughly documented book on the *Essentials of International Public Law and Organization* (1927), Professor Amos G. Hershey has appended to each chapter and listed in footnotes a wealth of references to the literature of his subject. Other older but useful bibliographies may be found in Krehbiel, *Nationalism, War and Society* (1916), and in Hicks, *The New World Order* (1920). Reference should be made also to the bibliography in Dr. Isaiah Bowman's *The New World* (4th Ed. 1928), itself a most helpful book of reference. *Foreign Affairs*, published quarterly by the Council on Foreign Relations (New York), lists in each issue recent books on international relations, and source material in the form of public documents compiled by Denys P. Myers.

Happily the student may avail himself of numerous sources of authoritative information on current international events and movements aside from the more or less inaccessible material to which reference may be found in the bibliographies. The document series published by the Division of Intercourse and Education of the Carnegie Endowment for International Peace (New York) under the title *International Conciliation* (cited in the footnotes as *Int. Con.*) is of the utmost value to the student of international affairs. Its more than 260 numbers deal with very many of the outstanding international interests of the past two decades; this material may be currently obtained from the Endowment at nominal expense.

Equally valuable for collateral reading is the pamphlet series published by the World Peace Foundation (Boston). Beginning in 1911, six volumes were published under the title *World Peace Foundation Pamphlet Series.* In 1917 the title was changed to *League of Nations,* and again in 1923 to *World Peace Foundation Pamphlets* (cited as *W. P. F. P.*). The series makes available at small expense a wealth of material on many important international questions of current interest. Other valuable matter is published by the Foreign Policy Association and the Council on Foreign Relations (New York). Available to American students, also, is the collection of statistical and documentary material published by the American Library in Paris. In this connection, also, may be mentioned the *British Year Book of International Law,* and the *British Survey of International Affairs,* the latter published in London by the Royal Institute of International Affairs and of great value to students and readers having access to it.

Among the American periodicals useful in keeping abreast of contemporary international events are *Current History* and *Foreign Affairs* (New York) and the *Living Age* (Boston); and among the English, the *Contemporary Review* and *Foreign Affairs* (London). *The American Journal of International Law* (cited as *A. J.*), published quarterly by the American Society of International Law (Washington), while devoted primarily to legal matters, presents authoritatively many subjects of interest to students of international government. Its *Supplements of Official Documents* are especially valuable, covering the more important treaties and other international documents from 1907 down.

Needless to say, students of international affairs should be regular readers of some metropolitan journal maintaining an adequate foreign service, such as the *New York Times,* for example; and the foreign point of view, as gleaned from some reliable British or

Continental journal like the *Manchester Guardian* (Manchester, England) will be found interesting and useful.

On legal topics, the standard international law texts may be referred to; every library should have several of them. So also, John Bassett Moore's monumental *Digest of International Law,* in eight volumes, has a wealth of material bearing on the legal and diplomatic relations of states.

As for international treaties, the vast majority of them, interesting as they may be historically, have no special significance to the student of international government, except as evidences of those increasingly intimate relations between states which constitute the basis of international government. Great collections of treaties like that of G. F. de Martens are impressive from this point of view, but not because of the intrinsic importance of any considerable number of the treaties assembled. Not so, however, as to the great law-making treaties discussed in the text; of comparatively recent origin, they constitute important additions to international law. The texts of these treaties may be found in the collections of documents and other source material referred to below. Treaties entered into since the organization of the League of Nations, by its members, are published in the *Treaty Series* issued by the Secretariat of the League.

Treaties to which the United States is a party may be found in three volumes entitled *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers,* which bring the collection down to 1923, and in the current *Treaty Series* published by the Government Printing Office. As already noted, most if not all of these instruments since 1907 are published in the *Official Document Supplements* of the *American Journal of International Law;* they are now filed for publication in the League *Treaty Series* referred to above. It may be noted in passing that the United States Government also issues many useful publications relating to international affairs which are readily obtainable on application.

In the field of diplomacy interesting light on diplomatic practice and the spirit of diplomacy may be gained from works dealing with diplomatic experiences, such as the *Life and Letters of Walter Hines Page.* Works on American Diplomacy like those of Fish, Moore, Adams, Sears, and Latané may be consulted for their value in illustrating the general diplomatic intercourse of nations.

Many of the treatises cited in the footnotes contain documentary material in their appendices. Potter, *International Organization,* has an especially valuable collection of documents. Reference has already been made to the *Supplements of Official Documents* published with the *American Journal of International Law.* Whittuck, *International Documents* (1906), covers important material back to the middle of the nineteenth century, while Mowat, *Select Treaties and Documents* (1916), illustrates the development of the modern European state system from 1815 to 1916. Harley, *Selected Documents* (1926), contains material more especially relating to the Hague Permanent Court of Arbitration, the League of Nations, the Permanent Court of International Justice, and the work of the Washington Conference on the Limitation of Armaments.

A well-equipped reference library should have a full set, kept up to date, of the publications of the League of Nations, including those of the International Labor Organization and the World Court. This would include the *Official Journal* of the League, the reports and publications of the various technical bodies associated with the Council and the Secretariat, and the *Treaty Series.* The expense of this service, however, is prohibitive for many libraries; but fortunately the *Monthly Summary of the League of Nations,* to which has lately been added a corresponding *Summary of the International Labor Organization,* affords an admirably succinct and inexpensive review of the various activities of the League, including the World Court. This *Summary* is distributed for the United States by the World Peace Foundation, through which may also be obtained the other publications of the League and the International Labor Office.

Especially valuable for the general reader is the series of handbooks published by the Information Section of the League Secretariat, dealing with all the major activities of the League. While not official, these booklets may be relied upon as general and not too technical presentations of their subjects; they are obtainable at a nominal price. The Registrar of the World Court publishes an elaborate *Annual Report* covering its organization and work, including an extended bibliography of the Court.

The World Peace Foundation has among its pamphlets mentioned above Handbooks and Yearbooks of the League of Nations valuable for ready reference. Its Handbooks appear in Volumes V and VII of its pamphlet series, and cover the League record down to 1924, since which year it has published successive Yearbooks beginning with Volume VIII, the last one covering the year 1927. In the last volume of the *Pamphlets* (Volume XII, No. 1) appears a review, by Denys P. Myers, of the League down to the end of 1928.

Volume XI contains a comprehensive record of the International Labor Organization covering the period 1919–1928, and a Yearbook of the World Court prepared by Professor M. O. Hudson, which brings the record of its judgments and advisory opinions down to 1928, and includes a collection of documents concerning the Court.

For statistical material the *Statesman's Year Book* and the *World Almanac* are valuable; and for a current review of foreign affairs from the standpoint of American foreign policy reference should be made to the *Survey of American Foreign Relations* published by the Council on Foreign Relations, the first volume being for the year 1928 and the second for 1929. On the general subjects discussed in this book the student will consult with profit the various articles dealing with them in the fourteenth edition of the *Encyclopedia Britannica*. Special reference should be made, also, to the *Encyclopedia of the Social Sciences*, now being published.

Appended to the chapters of this volume are limited lists of references to books and articles for collateral reading. The usefulness of such selected readings depends upon the discretion with which the selections are made, especially where, as in the field of this study, the literature of the subject is voluminous. Too extended references are apt to defeat their purpose — to discourage the reader rather than stimulate him to further study. It is hoped that these references will afford a helpful guide for those interested in following out the main lines developed, with necessary brevity, in the text. The practical aim has been to include only material ordinarily available to readers having access to fairly well-equipped libraries.

APPENDIX B

COVENANT OF THE LEAGUE OF NATIONS[1]

THE HIGH CONTRACTING PARTIES,

In order to promote international coöperation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honorable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another,

Agree to this Covenant of the League of Nations.

ARTICLE I

Membership and Withdrawal

1. The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant, and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accessions shall be effected by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

2. Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guaranties of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

3. Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

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[1] This annotated text of the Covenant, which includes amendments in force to date, is reprinted by the courtesy of the World Peace Foundation. Amendments incorporated in the Covenant are printed in italics.

ARTICLE II

Executive Organs

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

ARTICLE III

Assembly

1. The Assembly shall consist of representatives of the Members of the League.

2. The Assembly shall meet at stated intervals and from time to time, as occasion may require, at the Seat of the League, or at such other place as may be decided upon.

3. The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

4. At meetings of the Assembly each Member of the League shall have one vote and may have not more than three Representatives.

ARTICLE IV

Council

1. The Council shall consist of representatives of the Principal Allied and Associated Powers [United States of America, the British Empire, France, Italy and Japan], together with Representatives of four [2] other Members of the League. These four [2] Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Greece and Spain shall be Members of the Council.

2. With the approval of the majority of the Assembly, the Council may name additional Members of the League, whose Representatives shall always be Members of the Council; [3] the Council with like approval may increase the number of Members of the League to be selected by the Assembly [3] for representation on the Council.[2]

2 *bis.*[4] *The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent Members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility.*

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[2] The number of Members of the Council selected by the Assembly, by application of the second clause of Art. IV, par. 2, was increased from four to six on September 25, 1922, and from six to nine on September 8, 1926.

[3] By application of this clause Germany was designated as a permanent Member of the Council on September 8, 1926, the appropriate action of the Council having been taken on September 4.

[4] This paragraph came into force on July 29, 1926, in accordance with Art. XXVI. The regulations were adopted by the Assembly on September 15.

3. The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

4. The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

5. Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

6. At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

ARTICLE V

Voting and Procedure

1. Except where otherwise expressly provided in this Covenant, or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

2. All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

3. The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

ARTICLE VI

Secretariat and Expenses

1. The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

2. The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

3. The secretaries and the staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

4. The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

5.[5] *The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.*

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[5] This paragraph came into force as an amendment on August 13, 1924, in accordance with Art. XXVI. The original provision was as follows:

ARTICLE VII

Seat, Qualifications of Officials, Immunities

1. The Seat of the League is established at Geneva.

2. The Council may at any time decide that the Seat of the League shall be established elsewhere.

3. All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

4. Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

5. The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

ARTICLE VIII

Reduction of Armaments

1. The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

2. The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

3. Such plans shall be subject to reconsideration and revision at least every 10 years.

4. After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

5. The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

6. The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programs, and the condition of such of their industries as are adaptable to warlike purposes.

"The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union."

ARTICLE IX

Permanent Military, Naval and Air Commission

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

ARTICLE X

Guaranties Against Aggression

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE XI

Action in Case of War or Threat of War

1. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall, on the request of any Member of the League, forthwith summon a meeting of the Council.

2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ARTICLE XII [6]

Disputes to Be Submitted for Settlement

1. The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter

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[6] The text as printed came into force as an amendment on September 26, 1924, in accordance with Art. XXVI. The original text was as follows:

"The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

"In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute."

either to arbitration *or judicial settlement* or to inquiry by the Council and they agree in no case to resort to war until three months after the award by the arbitrators *or the judicial decision,* or the report by the Council.

2. In any case under this Article, the award of the arbitrators *or the judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

ARTICLE XIII [7]

Arbitration or Judicial Settlement

1. The Members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration *or judicial settlement,* and which can not be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement.*

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement.*

3. *For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.*

4. The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will

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[7] The text as printed came into force as an amendment on September 26, 1924 in accordance with Art. XXVI. The original text was as follows:

"The Members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which can not be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

"Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

"For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

"The Members of the League agree that they will carry out in full good faith any award that may be rendered and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto."

not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award *or decision,* the Council shall propose what steps should be taken to give effect thereto.

ARTICLE XIV [8]

Permanent Court of International Justice

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

ARTICLE XV [9]

Disputes Not Submitted to Arbitration or Judicial Settlement

1.[10] If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration *or judicial settlement* in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

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[8] The first sentence of this article has been fulfilled. The Council on February 13, 1920, appointed an Advisory Committee of Jurists to report a scheme to it. The draft Statute, prepared by the Committee June 16–July 24, 1920, was revised and finally approved by the Council on October 28. It was then submitted to the First Assembly for consideration of representatives of Members of the League. The plan, called a Statute, is attached to a protocol of signature of December 16, 1920, the ratification of which constitutes adoption of the plan by Members of the League and other states.

The stipulations of the second sentence are carried out by Art. 36 of the Statute. Cognizance is taken of the third sentence in Arts. 71–74 of the Rules of Court.

[9] On interpretations of pars. 1 and 8, see *Official Journal,* V, p. 524, and for the replies of the Governments, Document 1926. V. 12.

[10] The text of the first paragraph as printed came into force as an amendment on September 26, 1924, in accordance with Art. XXVI. The original text was as follows:

"If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article XIII, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof."

2. For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavor to effect a settlement of the dispute and, if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

4. If the dispute is not thus settled, the Council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the Members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within 14 days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

ARTICLE XVI

Sanctions of Pacific Settlement

1.[11] Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

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[11] The Assembly has voted in favor of the following amendments to Art. XVI to replace paragraph one, and the Members are now deciding upon their ratification:

"Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, *which hereby undertake immediately to subject it to the severance of all trade or financial relations and to prohibit all intercourse at least between persons resident within their territories and persons resident within the territory of the covenant-breaking State and, if they deem it expedient, also between their nationals and the nationals of the covenant-breaking State, and to prevent all financial, commercial or personal intercourse at least between persons resident within the territory of that State and persons resident within the territory of any other State, whether a Member of the League or not, and, if they deem it expedient, also between the nationals of that State and the nationals of any other State whether a Member of the League or not.*"

[N.B.—The above amendment was voted by the Fifth Assembly on September 27, 1924, to supersede an amendment voted by the Second Assembly and which was being ratified in the following form: ". . . *which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between persons residing in their territory and persons residing in the territory of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between persons residing in the territory of the covenant-breaking State and persons residing in the territory of any other State, whether a Member of the League or not.*"]

"*It is for the Council to give an opinion whether or not a breach of the Covenant has taken place. In deliberations on this question in the Council, the votes of Members of the League alleged to have resorted to war and of Members against whom such action was directed shall not be counted.*

"*The Council will notify to all Members of the League the date which it recommends for the application of the economic pressure under this Article.*

"*Nevertheless, the Council may, in the case of particular Members, postpone the coming into force of any of these measures for a specified period where it is satisfied that such a postponement will facilitate the attainment of the object of the measures referred to in the preceding paragraph, or that it is necessary in order to minimize the loss and inconvenience which will be caused to such Members.*"

2. It shall be the duty of the Council in such case[12] to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are coöperating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

ARTICLE XVII

Disputes Involving Nonmembers

1. In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of Membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16, inclusive, shall be applied with such modifications as may be deemed necessary by the Council.

2. Upon such invitation being given, the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

3. If a State so invited shall refuse to accept the obligations of Membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

4. If both parties to the dispute, when so invited, refuse to accept the obligations of Membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

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[12] The Assembly on September 21, 1925, adopted a resolution providing that the words "in such case" shall be deleted. The amendment has been submitted to Member States for ratification.

ARTICLE XVIII

Registration and Publication of Treaties

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

ARTICLE XIX

Review of Treaties

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world.

ARTICLE XX

Abrogation of Inconsistent Obligations

1. The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

2. In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligation inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

ARTICLE XXI

Engagements that Remain Valid

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

ARTICLE XXII

Mandatory System

1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be intrusted to advanced nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as Southwest Africa and certain of the South Pacific islands, which, owing to the sparseness of their population or their small size, or their remoteness from the centers of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories, and to advise the Council on all matters relating to the observance of the mandates.

ARTICLE XXIII

Social and Other Activities

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) will endeavor to secure and maintain fair and humane conditions of labor for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will intrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children and the traffic in opium and other dangerous drugs;

(*d*) will intrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914–1918 shall be borne in mind;

(*f*) will endeavor to take steps in matters of international concern for the prevention and control of disease.

ARTICLE XXIV

International Bureaus

1. There shall be placed under the direction of the League all international bureaus already established by general treaties, if the parties to such treaties consent. All such international bureaus and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

2. In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaus or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

3. The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

ARTICLE XXV

Promotion of Red Cross and Health

The Members of the League agree to encourage and promote the establishment and coöperation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

ARTICLE XXVI [13]

Amendments

1. Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

2. No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

ANNEX

I. ORIGINAL MEMBERS OF THE LEAGUE OF NATIONS, SIGNATORIES OF THE TREATY OF PEACE

* United States of America
Belgium
Bolivia
* Brazil
British Empire
    Canada
    Australia
    South Africa
    New Zealand
    India
China
Cuba
* Ecuador
France
Greece
Guatemala
Haiti
* Hedjaz
Honduras
Italy
Japan
Liberia
Nicaragua
Panamá
Perú
Poland
Portugal
Rumania
Serb-Croat-Slovene State
Siam
Czechoslovakia
Uruguay

32
3
29

* Not a Member state.

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[13] The Assembly voted in favor of the following amendments to replace Art. XXVI, in 1921, and the Members are now deciding upon its ratification:

"*Amendments to the present Covenant the text of which shall have been voted by the Assembly on a three-fourths majority, in which there shall be included the votes of all the Members of the Council represented at the meeting,*

States Invited to Accede to the Covenant

Argentine Republic
Chile
Colombia
Denmark
Netherlands
Norway
Paraguay
Persia
Salvador
Spain
Sweden
Switzerland
Venezuela

II. First Secretary-General of the League of Nations

The Honorable Sir James Eric Drummond, K.C.M.G., C.B.

States Admitted to Membership

Abyssinia
Albania
Austria
Bulgaria
* Costa Rica
Dominican Republic
Esthonia
Finland
Germany
Hungary
Irish Free State
Latvia
Lithuania
Luxemburg

* Not a Member state.

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will take effect when ratified by the Members of the League whose Representatives composed the Council when the vote was taken and by the majority of those whose Representatives form the Assembly.

"If the required number of ratifications shall not have been obtained within twenty-two months after the vote of the Assembly, the proposed amendment shall remain without effect.

"The Secretary-General shall inform the Members of the taking effect of an amendment.

"Any Member of the League which has not at that time ratified the amendment is free to notify the Secretary-General within a year of its refusal to accept it, but in that case it shall cease to be a Member of the League."

APPENDIX C

STATUTE

ESTABLISHING THE PERMANENT COURT OF INTERNATIONAL JUSTICE [1]

ART. 1. A Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

CHAPTER I

Organization of the Court

ART. 2. The Permanent Court of International Justice shall be composed of a body of independent judges elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

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[1] Under a resolution of the Assembly of the League of Nations, adopted September 20, 1928, a Committee of Jurists was set up to consider amendments to the Statute of the Permanent Court of International Justice. The report of this Committee, embodying certain proposed amendments, was considered and approved by an international conference of the signatories of the original Protocol of December 16, 1920, held at Geneva in September, 1929, and by the Tenth Assembly of that year. These amendments were to have come into force on September 1, 1930, but failing to secure the unanimous approval of the signatories, they did not become effective on that date. When the Protocol of Revision of the Statute came before the Assembly of 1930, the objection of Cuba prevented unanimous agreement on the proposed amendments, so that they are not now in force. The Assembly did, however, adopt a resolution increasing the number of judges from eleven to fifteen, and the election of judges by the Assembly and Council proceeded on that basis.

The more important changes in the Statute proposed by the Committee include: (1) An increase of the number of judges from eleven to fifteen, and the abolition of the office of deputy-judge; (2) provisions that the Court shall be constantly in session, except for judicial vacations, instead of holding one stated session and extraordinary sessions when needed, as now, that the judges may not engage in any other occupation of a professional nature, and that they shall hold themselves permanently at the disposal of the Court unless on regular leave or prevented from attending by sufficient reasons: and (3) a new chapter (IV) dealing with advisory opinions. The Statute as it now stands contains no reference to the exercise of advisory functions under Art. XIV of the Covenant; therefore the Court had been forced to frame rules of procedure applicable to advisory opinions. With the adoption of the new Chapter IV the matter will be regulated by the Statute.

The text as it now stands is printed in this Appendix. Some of the textual changes proposed will be indicated in the footnotes.

ART. 3. The Court shall consist of fifteen members: eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges.

ART. 4. The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the list of candidates shall be drawn up by natural groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.[2]

ART. 5. At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the Members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.

ART. 6. Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

ART. 7. The Secretary-General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the Assembly and to the Council.

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[2] The following addition to Art. 4 is proposed: *The conditions under which a State which has accepted the Statute of the Court but is not a member of the League of Nations, may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the Assembly on the proposal of the Council.*

ART. 8. The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges.

ART. 9. At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

ART. 10. Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

ART. 11. If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

ART. 12. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

ART. 13. The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

ART. 14. Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term.

ART. 15. Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court and shall have regard firstly to priority of election and secondly to age.

ART. 16. The ordinary members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.

ART. 17. No member of the Court can act as agent, counsel or advocate in any case of an international nature. This provision only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties, or as a member of a national or international Court, or of a commission of enquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

ART. 18. A member of the Court cannot be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary-General of the League of Nations, by the Registrar.

This notification makes the place vacant.

ART. 19. The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

ART. 20. Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

ART. 21. The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary-General of the Permanent Court of Arbitration.

ART. 22. The seat of the Court shall be established at The Hague.

The President and Registrar shall reside at the seat of the Court.

ART. 23. A session of the Court shall be held every year.

Unless otherwise provided by Rules of Court, this session shall begin on the 15th of June, and shall continue for so long as may be deemed necessary to finish the cases on the list.

The President may summon an extraordinary session of the Court whenever necessary.

ART. 24. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

ART. 25.[3] The full Court shall sit except when it is expressly provided otherwise.

If eleven judges cannot be present, the number shall be made up by calling on deputy-judges to sit.

If, however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court.

ART. 26. Labor cases, particularly cases referred to in Part XIII (Labor) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to insuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with the rules of procedure under Article 30 from a list of "Assessors for Labor cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labor Office. The Governing Body will nominate, as to one-half, representatives of the workers, and as to one-half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

In labor cases the International Labor Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

ART. 27. Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions:

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[3] If amended as proposed the second and third paragraphs of this article will read as follows:

Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

Provided always that a quorum of nine judges shall suffice to constitute the Court.

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications cases" composed of two persons nominated by each Member of the League of Nations.

ART. 28. The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

ART. 29.[4] With a view to the speedy despatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.

ART. 30. The Court shall frame rules for regulating its procedure. In particular it shall lay down rules for summary procedure.

ART. 31. Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

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[4] If amended as proposed this article will read:

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of five judges who, at the request of the contesting parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.

ART. 32. The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

The Vice-President, judges and deputy-judges shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Travelling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

ART. 33. The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

CHAPTER II

Competence of the Court

ART. 34. Only States or Members of the League of Nations can be parties in cases before the Court.

ART. 35. The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute towards the expenses of the Court.

ART. 36. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force.

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory, *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(*a*) The interpretation of a treaty;
(*b*) Any question of international law;
(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation;
(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Art. 37. When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.

Art. 38. The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

2. International custom, as evidence of a general practice accepted as law;

3. The general principles of law recognized by civilized nations;

4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

Chapter III

Procedure

Art. 39. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of the parties, authorize a language other than French or English to be used.

ART. 40.[5] Cases are brought before the Court, as the case may be, either by the notification of the special agreement, or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.

ART. 41. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

ART. 42. The parties shall be represented by agents.

They may have the assistance of counsel or advocates before the Court.

ART. 43. The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

ART. 44. For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

ART. 45. The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

ART. 46. The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

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[5] It is proposed to amend the last paragraph of this article to read as follows:

He shall also notify the Members of the League of Nations through the Secretary-General, and also any States entitled to appear before the Court.

ART. 47. Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

ART. 48. The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

ART. 49. The Court may, even before the hearing begins, call upon the agents to produce any document, or to supply any explanations. Formal note shall be taken of any refusal.

ART. 50. The Court may, at any time, intrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an inquiry or giving an expert opinion.

ART. 51. During the hearing, any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

ART. 52. After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

ART. 53. Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favor of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

ART. 54. When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

ART. 55. All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

ART. 56. The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

ART. 57. If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

ART. 58. The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

ART. 59. The decision of the Court has no binding force except between the parties and in respect of that particular case.

ART. 60. The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

ART. 61. An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.

ART. 62. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

ART. 63. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

ART. 64. Unless otherwise decided by the Court, each party shall bear its own costs.

The following chapter proposed by the Committee of Jurists is entirely new.

CHAPTER IV

Advisory Opinions

ART. 65. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

The request shall contain an exact statement of the question upon which an opinion is required, and shall be accompanied by all documents likely to throw light upon the question.

Art. 66. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

Should any Member or State referred to in the first paragraph have failed to receive the communication specified above, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

Members, States, and organizations having presented written or oral statements or both shall be admitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements.

Art. 67. The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of Members of the League, of States and of international organizations immediately concerned.

Art. 68. In the exercise of its advisory functions, the Court shall further be guided by the provisions of the Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

APPENDIX D

ARTICLES ESTABLISHING THE INTERNATIONAL LABOR ORGANIZATION[1]

SECTION I

ORGANIZATION OF LABOR

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labor exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labor supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following:

CHAPTER I

Organization

ARTICLE 387

A permanent organization is hereby established for the promotion of the objects set forth in the Preamble.

The original Members of the League of Nations shall be the original

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[1] Part XIII, Labor, of the treaty of peace with Germany, Versailles, June 28, 1919. Reprinted from *W. P. F. P.*, Vol. XI, Nos. 4–5 (1928).

Members of this organization, and hereafter membership of the League of Nations shall carry with it membership of the said organization.

ARTICLE 388

The permanent organization shall consist of:

(1) a General Conference of Representatives of the Members and,

(2) an International Labor Office controlled by the Governing Body described in Art. 393.

ARTICLE 389

The meetings of the General Conference of Representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four Representatives of each of the Members, of whom two shall be Government Delegates and the two others shall be Delegates representing respectively the employers and the workpeople of each of the Members.

Each Delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.

The Members undertake to nominate non-Government Delegates and advisers chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

Advisers shall not speak except on a request made by the Delegate whom they accompany and by the special authorization of the President of the Conference, and may not vote.

A Delegate may by notice in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

The names of the Delegates and their advisers will be communicated to the International Labor Office by the Government of each of the Members.

The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with this article.

ARTICLE 390

Every Delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

If one of the Members fails to nominate one of the non-Government Delegates whom it is entitled to nominate, the other non-Government Delegate shall be allowed to sit and speak at the Conference, but not to vote.

If in accordance with Art. 389 the Conference refuses admission to a Delegate of one of the Members, the provisions of the present article shall apply as if that Delegate had not been nominated.

ARTICLE 391

The meetings of the Conference shall be held at the seat of the League of Nations, or at such other place as may be decided by the Conference at a previous meeting by two-thirds of the votes cast by the Delegates present.

ARTICLE 392

The International Labor Office shall be established at the seat of the League of Nations as part of the organization of the League.

ARTICLE 393 [2]

The International Labor Office shall be under the control of a Governing Body consisting of twenty-four persons, appointed in accordance with the following provisions:

The Governing Body of the International Labor Office shall be constituted as follows:

Twelve persons representing the Governments;

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[2] The Conference on October 18, 1922, adopted the following amendment to Art. 393, which will enter into force when ratified as prescribed in Art. 422:

"The International Labor Office shall be under the control of a Governing Body consisting of 32 persons:

"Sixteen representing Governments,

"Eight representing the Employers, and

"Eight representing the Workers.

"Of the 16 persons representing Governments, eight shall be appointed by the members of chief industrial importance, and eight shall be appointed by the members selected for that purpose by the Government delegates to the Conference excluding the delegates of the eight members mentioned above. Of the 16 members represented six shall be non-European states.

"Any question as to which are the members of chief industrial importance shall be decided by the Council of the League of Nations.

"The persons representing the Employers and the persons representing the Workers shall be elected respectively by the Employers' delegates and the Workers' delegates to the Conference. Two Employers' representatives and two Workers' representatives shall belong to non-European states.

"The period of office of the Governing Body shall be three years.

"The method of filling vacancies and of appointing substitutes, and other similar questions, may be decided by the Governing Body subject to the approval of the Conference.

"The Governing Body shall, from time to time, elect one of its number to act as its Chairman, shall regulate its own procedure, and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least 12 of the representatives on the Governing Body." (International Labor Conference, Fourth Session, Vol. I, p. 606.)

Forty-two ratifications are required to bring the amendment into force. Up to October, 1930, forty-one ratifications had been deposited.

Six persons elected by the Delegates to the Conference representing the employers;

Six persons elected by the Delegates to the Conference representing the workers.

Of the twelve persons representing the Governments eight shall be nominated by the Members which are of the chief industrial importance, and four shall be nominated by the Members selected for the purpose by the Government Delegates to the Conference, excluding the Delegates of the eight Members mentioned above.

Any questions as to which are the Members of the chief industrial importance shall be decided by the Council of the League of Nations.

The period of office of the Members of the Governing Body will be three years. The method of filling vacancies and other similar questions may be determined by the Governing Body subject to the approval of the Conference.

The Governing Body shall, from time to time, elect one of its members to act as its Chairman, shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least ten members of the Governing Body.

ARTICLE 394

There shall be a Director of the International Labor Office, who shall be appointed by the Governing Body, and, subject to the instructions of the Governing Body, shall be responsible for the efficient conduct of the International Labor Office and for such other duties as may be assigned to him.

The Director or his deputy shall attend all meetings of the Governing Body.

ARTICLE 395

The staff of the International Labor Office shall be appointed by the Director, who shall, so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities. A certain number of these persons shall be women.

ARTICLE 396

The functions of the International Labor Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labor, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

It will prepare the agenda for the meetings of the Conference.

It will carry out the duties required of it by the provisions of this Part of the present treaty in connection with international disputes.

It will edit and publish in French and English, and in such other languages as the Governing Body may think desirable, a periodical paper dealing with problems of industry and employment of international interest.

Generally, in addition to the functions set out in this article, it shall have such other powers and duties as may be assigned to it by the Conference.

ARTICLE 397

The Government Departments of any of the Members which deal with questions of industry and employment may communicate directly with the Director through the Representative of their Government on the Governing Body of the International Labor Office, or failing any such Representative, through such other qualified official as the Government may nominate for the purpose.

ARTICLE 398

The International Labor Office shall be entitled to the assistance of the Secretary-General of the League of Nations in any matter in which it can be given.

ARTICLE 399

Each of the Members will pay the traveling and subsistence expenses of its Delegates and their advisers and of its Representatives attending the meetings of the Conference or Governing Body, as the case may be.

All the other expenses of the International Labor Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Secretary-General of the League of Nations out of the general funds of the League.

The Director shall be responsible to the Secretary-General of the League for the proper expenditure of all moneys paid to him in pursuance of this article.

CHAPTER II

Procedure

ARTICLE 400

The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestion as to the agenda that may be made by the Government of any of the Members or by any representative organization recognized for the purpose of Art. 389.

ARTICLE 401

The Director shall act as the Secretary of the Conference, and shall transmit the agenda so as to reach the Members four months before the meeting of the Conference, and, through them, the non-Government Delegates when appointed.

ARTICLE 402

Any of the Governments of the Members may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all the Members of the Permanent Organization.

Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two-thirds of the votes cast by the Delegates present is in favor of considering them.

If the Conference decides (otherwise than under the preceding paragraph) by two-thirds of the votes cast by the Delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting.

ARTICLE 403

The Conference shall regulate its own procedure, shall elect its own President, and may appoint committees to consider and report on any matter.

Except as otherwise expressly provided in this Part of the present treaty, all matters shall be decided by a simple majority of the votes cast by the Delegates present.

The voting is void unless the total number of votes cast is equal to half the number of the Delegates attending the Conference.

ARTICLE 404

The Conference may add to any committees which it appoints technical experts, who shall be assessors without power to vote.

ARTICLE 405

When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form: (*a*) of a recommendation to be submitted to the Members for consideration with a view to effect being given to it by national legislation or otherwise, or (*b*) of a draft international convention for ratification by the Members.

In either case a majority of two-thirds of the votes cast by the Delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.

In framing any recommendation or draft convention of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

A copy of the recommendation or draft convention shall be authenticated by the signature of the President of the Conference and of the Director and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft convention to each of the Members.

Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

In the case of a recommendation, the Members will inform the Secretary-General of the action taken.

In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.

If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member.

In the case of a federal state, the power of which to enter into conventions on labor matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this article with respect to recommendations shall apply in such case.

The above article shall be interpreted in accordance with the following principle:

In no case shall any Member be asked or required, as a result of the adoption of any recommendation or draft convention by the Conference, to lessen the protection afforded by its existing legislation to the workers concerned.

ARTICLE 406

Any convention so ratified shall be registered by the Secretary-General of the League of Nations, but shall only be binding upon the Members which ratify it.

ARTICLE 407

If any convention coming before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the Delegates present, it shall nevertheless be within the right of any of the Members of the Permanent Organization to agree to such convention among themselves.

Any convention so agreed to shall be communicated by the Governments concerned to the Secretary-General of the League of Nations, who shall register it.

ARTICLE 408

Each of the Members agrees to make an annual report to the International Labor Office on the measures which it has taken to give effect to the provisions of conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. The Director shall lay a summary of these reports before the next meeting of the Conference.

ARTICLE 409

In the event of any representation being made to the International Labor Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the Government against which it is made and may invite that Government to make such statement on the subject as it may think fit.

ARTICLE 410

If no statement is received within a reasonable time from the Government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

ARTICLE 411

Any of the Members shall have the right to file a complaint with the International Labor Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing articles.

The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the Government in question in the manner described in Art. 409.

If the Governing Body does not think it necessary to communicate the complaint to the Government in question, or if, when they have made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may apply for the appointment of a Commission of Inquiry to consider the complaint and to report thereon.

The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a Delegate to the Conference.

When any matter arising out of Arts. 410 or 411 is being considered by the Governing Body, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the Government in question.

ARTICLE 412

The Commission of Inquiry shall be constituted in accordance with the following provisions:

Each of the Members agrees to nominate within six months of the date on which the present treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the Members of the Commission of Inquiry shall be drawn.

The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the representatives present refuse to accept the nomination of any person whose qualifications do not in its opinion comply with the requirements of the present article.

Upon the application of the Governing Body, the Secretary-General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Inquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any Member directly concerned in the complaint.

ARTICLE 413

The Members agree that, in the event of the reference of a complaint to a Commission of Inquiry under Art. 411 they will each, whether directly concerned in the complaint or not, place at the disposal of the commission all the information in their possession which bears upon the subject-matter of the complaint.

ARTICLE 414

When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

It shall also indicate in this report the measures, if any, of an economic character against a defaulting Government which it considers to be appropriate, and which it considers other Governments would be justified in adopting.

ARTICLE 415

The Secretary-General of the League of Nations shall communicate the report of the Commission of Inquiry to each of the Governments concerned in the complaint, and shall cause it to be published.

Each of these Governments shall within one month inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the report of the commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations.

ARTICLE 416

In the event of any Member failing to take the action required by Art. 405 with regard to a recommendation or draft convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice.

ARTICLE 417

The decision of the Permanent Court of International Justice in regard to a complaint or matter which has been referred to it in pursuance of Art. 415 or Art. 416 shall be final.

ARTICLE 418

The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Inquiry, if any, and shall in its decision indicate the measures, if any, of an economic character which it considers to be appropriate, and which other Governments would be justified in adopting against a defaulting Government.

ARTICLE 419

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other Member may take against that Member the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate in the case.

ARTICLE 420

The defaulting Government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Inquiry or with those in the decision of the Permanent Court of International Justice, as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Inquiry to verify its contention. In this case the provisions of Arts. 412, 413, 414, 415, 417 and 418 shall apply, and if the report of the Commission of Inquiry or the decision of the Permanent Court of International Justice is in favor of the defaulting Government, the other Governments shall forthwith discontinue the measures of an economic character that they have taken against the defaulting Government.

CHAPTER III

General

ARTICLE 421

The Members engage to apply conventions which they have ratified in accordance with the provisions of this Part of the present treaty to their colonies, protectorates and possessions which are not fully self-governing:

(1) Except where owing to the local conditions the convention is inapplicable, or

(2) Subject to such modifications as may be necessary to adapt the convention to local conditions.

And each of the Members shall notify to the International Labor Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing.

ARTICLE 422

Amendments to this Part of the present treaty which are adopted by the Conference by a majority of two-thirds of the votes cast by the Delegates present shall take effect when ratified by the states whose representatives compose the Council of the League of Nations and by three-fourths of the Members.

ARTICLE 423

Any question or dispute relating to the interpretation of this Part of the present treaty or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the present treaty shall be referred for decision to the Permanent Court of International Justice.

CHAPTER IV

Transitory Provisions

ARTICLE 424

The first meeting of the Conference shall take place in October, 1919. The place and agenda for this meeting shall be as specified in the Annex hereto.

Arrangements for the convening and the organization of the first meeting of the Conference will be made by the Government designated for the purpose in the said Annex. That Government shall be assisted in the preparation of the documents for submission to the Conference by an International Committee constituted as provided in the said Annex.

The expenses of the first meeting and of all subsequent meetings held before the League of Nations has been able to establish a general fund, other than the expenses of Delegates and their advisers, will be borne by the Members in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

ARTICLE 425

Until the League of Nations has been constituted all communications which under the provisions of the foregoing articles should be addressed to the Secretary-General of the League will be preserved by the Director of the International Labor Office, who will transmit them to the Secretary-General of the League.

ARTICLE 426

Pending the creation of a Permanent Court of International Justice disputes which in accordance with this Part of the present treaty would be submitted to it for decision will be referred to a tribunal of three persons appointed by the Council of the League of Nations.

ANNEX

First Meeting of Annual Labor Conference, 1919

The place of meeting will be Washington.

The Government of the United States of America is requested to convene the Conference.

The International Organizing Committee will consist of seven Members, appointed by the United States of America, Great Britain, France, Italy, Japan, Belgium and Switzerland. The committee may, if it thinks necessary, invite other Members to appoint representatives.

Agenda:

(1) Application of principle of the 8-hours day or of the 48-hours week.

(2) Question of preventing or providing against unemployement.

(3) Women's employment:
  (*a*) Before and after child-birth, including the question of Maternity benefit;
  (*b*) During the night;
  (*c*) In unhealthy processes.

(4) Employment of children:
  (*a*) Minimum age of employment;
  (*b*) During the night;
  (*c*) In unhealthy processes.

(5) Extension and application of the international conventions adopted at Bern in 1906 on the prohibition of night work for women employed in industry and the prohibition of the use of white phosphorus in the manufacture of matches.

SECTION II

GENERAL PRINCIPLES

ARTICLE 427

The High Contracting Parties, recognizing that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section I and associated with that of the League of Nations.

They recognize that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labor difficult of immediate attainment. But, holding as they do, that labor should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labor conditions which all industrial communities should endeavor to apply, so far as their special circumstances will permit.

Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:

First. — The guiding principle above enunciated that labor should not be regarded merely as a commodity or article of commerce.

Second. — The right of association for all lawful purposes by the employed as well as by the employers.

Third. — The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth. — The adoption of an eight hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained.

Fifth. — The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

Sixth. — The abolition of child labor and the imposition of such limitations on the labor of young persons as shall permit the continuation of their education and assure their proper physical development.

Seventh. — The principle that men and women should receive equal remuneration for work of equal value.

Eighth. — The standard set by law in each country with respect to the conditions of labor should have due regard to the equitable economic treatment of all workers lawfully resident therein.

Ninth. — Each state should make provision for a system of inspection in which women should take part, in order to insure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are Members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world.

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